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Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM SUMNER SCOTT

Petitioner

v.

THE FLORIDA BAR

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI
VOLUME I OF II

William Sumner Scott, *Pro Se*
3109 Grand Avenue, #183
Miami, Florida 33133

Telephone (305) 961-9949
04wmscott@comcast.net

QUESTIONS PRESENTED

1. Does Article III of the United States Constitution authorize the United States Judicial Branch to supervise law enforcement decisions made by the United States Executive Branch?

2. Do the guarantees of freedom of speech and due process provided by the First and Fifth Amendments that extend to the States pursuant to the Fourteenth Amendment of the United States Constitution protect a lawyer from discipline for alleged violations of State Bar Rules when the lawyer used his best judgment to uphold his Bar oath of admission to defend the State and United States Constitutions and to serve the public interests?

PARTIES TO THE PROCEEDING

Petitioner, William Sumner Scott, Esquire, 3109 Grand Avenue, #183, Miami, FL 33133, was the Respondent to the Bar Complaint filed to the Florida Supreme Court.

The Florida Bar, Tallahassee, Florida, was the Complainant below.

Other persons who may have an interest are:

International (a/k/a Intercontinental) Currency Exchange Corporation (ICEC- CA) , a forex brokerage firm, 537 Newport Center Drive, #520, Newport Beach, California 92660; International (a/k/a Intercontinental) Currency Exchange Corporation (ICEC-NV) 1525 North Park Drive, Suite 100, Weston, Florida and certain of ICEC- NV customers: Jacques Gagne, Investcan International, Ltd., 3699 Letourneau, St. Hubert, Quebec, Canada J3Y 7TB; Dr. E. Michael Thomas, 117 E. Priscilla Alden Road, Abington, MA 02351; Roger B. Lennon, 1509 Bedford Street, Rome, NY 13440; Sebantiano Puccio, 300 Marcel Laurin, Suite 106, Ville St. Laurent, Quebec, Canada, H4M 2L4; Moresea, Ltd., Suite B, Regal House, Queensway, Gibraltar; Orville Shultz, 2218 Peach Tree Drive, Little Rock, AR 72211; Lawrence E. Amerson, 176 Woodham Road, Bishopville, SC 29010-8819; Gregory Paul Violette, RR#1, Box 430, Windsor, ME 04363 were Scott's clients before the Federal Court.

The beneficial ownership of Investcan, Ltd and Moresea, Ltd and the ownership structure are unknown to Petitioner; they have acted continuously through agents Jacques Gagne and Sebantiano Puccio, respectively, identified above.

Steven A. Frankel, Esquire, 3660 Washington Ln, Hollywood, Florida 33026-4629 a member of The Florida Bar, was the Bar complaining witness and a 50% owner of ICEC with Richard E. Maseri.

Richard E. Maseri, 537 Newport Center Drive, #520, Newport Beach, California 92660, and 1814 NE Miami Gardens Drive #200, North Miami Beach, FL 33179, was a 50% owner of ICEC with Frankel.

The Florida Supreme Court took judicial notice of the decision to disqualify Scott as the attorney for ICEC-CA and NV) and certain of ICEC-NV brokerage customers that was entered in the United States District Court for the Southern District of Florida and affirmed by the United States Court of Appeals for the Eleventh Circuit.

Barry R. Davidson, Esquire, a member of The Florida Bar, was appointed receiver by the USDC for the Southern District of Florida to collect the assets of Richard E. Maseri in the unrelated case of CFTC v Maseri, et al at case number 95-6970.

Detective John Calabro of the Broward County, Florida, Sheriff's office.

Prudential Securities, Inc. (now Wachovia Securities, Incorporated) was the depository for the ICEC CA corporate and ICEC NV customer accounts.

US Commodity Futures Trading Commission (the "CFTC"), 1155 21st Street, NW, Washington, DC, 20581.

Richard Wagner, Esquire, Deputy Director, CFTC Division of Enforcement, was the CFTC supervisor for the forex investigation in Florida in 1995-99.

The United States Justice Department, Washington, DC.

Maureen Donlan, Esquire, a member of The Florida Bar and assistant United States Attorney, Miami, Florida, was the attorney of record for the CFTC in the CFTC v Prudential, et al, case.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF CONTENTS v

TABLE OF AUTHORITIES viii

DECISIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS 1

THE PROCEEDINGS BELOW 6

THE RECORD 10

STATEMENT OF THE CASE 10

REASONS FOR GRANTING THE PETITION

I. To review law enforcement procedures that inhibits the honest administration of justice; and 22

II. To review freedom of speech and due process applicable to attorney sanction proceedings 28

CONCLUSION 35

APPENDIX TABLE OF CONTENTS

Page

APPENDIX A: Supreme Court Opinion dated June 10, 2010 ..... 1a

APPENDIX B: Amended Report of Referee..... 21a

APPENDIX C: United States Court of Appeals for the Eleventh Circuit Decision..... 42a

APPENDIX D: United States District Court Opinion to Disqualify..... 44a

APPENDIX E: Order to Deny Rehearing Petition 49a

APPENDIX F: WSS Motion to Compel Discovery 50a

APPENDIX G: List of ICEC customers and amounts on deposit 73a

APPENDIX H: December 21, 1998, Frankel Addendum - ICEC Retainer and Frankel Addendum 77a

APPENDIX I: December 16, 1998, SunSentinel News Article..... 81a

APPENDIX J: WSS suggested changes to ICEC First Draft - Comments to Maseri..... 83a

APPENDIX K: WSS retainer to prepare ICEC new account forms 85a

APPENDIX L: WSS decline of ICEC general counsel opportunity..... 90a

APPENDIX M: March 21, 2005 letter from WSS to Donlan 92a

APPENDIX N: USDC Order to close Prudential 1-4-2001 ..... 97a

APPENDIX O: Frankel Facsimile Memo of July 29, 1998 ..... 98a

APPENDIX P: Frankel Waiver of Conflicts Agreement dated December 18, 1998..... 100a

APPENDIX Q: Excerpt from Referee Hearing Transcript Volume II 103a

APPENDIX R: Excerpt from Referee Hearing Transcript Volume III 106a

APPENDIX S: Letter from Gardner to WSS 110a

TABLE OF AUTHORITIES

Page(s)

TABLE OF CITATIONS

CASES

CFTC v Frankwell, et al, 99 F.3d 299 (9th Cir. 1996) ..... , 11, 14, 15

CFTC v Maseri, et al., USDC for the So. Dist. Case number 95-6970 .....14, 16, 23, 24, 26

Cohen v. Hurley, 366 U. S. 117 (1961) 33

Cooper Industries, Inc. v. Leatherman Tools Group, Inc., 532 U. S. 424 (2001). *31*

The Fla. Bar v Feige, 596 So.2d 433, 434..... 25

The Fla. Bar v Ward, 472, So. 2d 1159 (Fla. 1985) 25

Fla Bar v Barrett, 897 So. 2d 1269 (Fla 2005) 29

Fla Bar v Walter, 784 So. 2d 1085 (Fla 2001)..... 29

Haskins v City of Ft. Lauderdale, 898 So 2d 1120, 1123 (Fla 4th DCA 2005) 31

Hearndon v Graham, 767 So. 2d 1179 (Fla 2000) 29

Giboney v. Empire Storage Co., 336 U. S. 490 (1949) 34

In Re Estate of Smith, 685 So. 2d 1206, 1210 (Fla 1966), cert. denied, 117 S.Ct.. 2434 (1997) 31

Investcan, et al v Frankel, et al, USDC for the So Dist at case number 02-60565..... 17, 33

Landers v Milton, 370 So. 2d 368, 370 (Fla. 1979) 30

Lathrop v Donohue, 367 US 820, 884, (1961) 33

Mason v Salinas, 643 So. 2d 1077, 1078 (Fla 1994) 31

Olmstead v United States, 277 U. S. 438, 485 (1928) 20

Prudential Securities, Inc. v US Commodity Futures Trading Commission ("CFTC"), et al, at United States District Court for the Southern District case number 98-8891 ..... 16, 26

Romer v Evans, 517 US 620 (1996) 35

Scott v Fla Bar, SC 08-2227 (Fla12-8-08) 29

Sheiner v State, 82 So. 2d 657, 662-663 (Fla. 1955) 30

Tot v. United States, 319 U. S. 463, (1943) 34

United States v Virginia, 518 U. S. 515 (1996) 35

Wiley v Roof, 641 So. 2d 66, 68-69 (Fla. 1994) 31

Wood v Eli Lily & Co., 701 So2d 344, 346 (Fla 1997) 31

RULES AND STATUTES

U.S. Constitution, Article II, Section 2 1

U.S. Constitution, Article II, Section 3 2

U.S. Constitution, Article III, Section 2 2

U.S. Constitution, First Amendment 2, 13, 22, 34

U.S. Constitution, Fifth Amendment 2, 13

U.S. Constitution, Fourteenth Amendment 2, 13

United States Supreme Court Rule 13 1
Commodity Exchange Act, 7 USC §1, et seq. 3
28 U. S. C. §1257 ..... 1, 15
Florida Bar Disciplinary Rule 3-7.6 32
Florida Bar Oath of Admission 3
Florida Bar Rule 3-7.16 (a) 4, 28
Florida Bar Rule 4-1.16 ..... 5, 7
Florida Bar Rule 4-1.6 6
Florida Bar Rule 4-1.7 ..... 4, 31
Florida Bar Rule 4-1.9 ..... 5, 7, 17
Florida Bar Rule 4-4.1 ..... 6, 20
Florida Bar Rule 4-8.4(c) 6, 7, 8, 13, 22
Florida Rule of Civil Procedure 1.280 (c) 32

NOW COMES, William Sumner Scott, pro se, to Petition for Writ of Certiorari, pursuant to United States Code, 28 U. S. C. §1257, and, in support thereof, states as follows:

DECISIONS BELOW

The decision of the Supreme Court of Florida is reprinted in Volume II, Appendix (App.) A at page 1a. The Amended Report of the Referee adopted by the Florida Supreme Court as to the facts is reprinted at App. B, page 21a. The United States Court of Appeals for the Eleventh Circuit unpublished opinion to affirm the United States District Court for the Southern District decision to disqualify me is reprinted at App. C, page 42a. The interlocutory decision of the United States District Court for the Southern District of Florida to disqualify me from the representation of the forex brokerage and its customers adopted by reference by the Referee is reprinted at App. D, page 44a. The Florida Supreme Court denied Petitioner's Motion for Rehearing on July 6, 2010. App. E, page 49a.

JURISDICTION

This Petition is filed to this Court together with the three hundred dollar ($300) filing fee within 90 days from the denial on July 6, 2010, of the Motion for Rehearing under United States Code, 28 U. S. C. §1257 and United States Supreme Court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Article II
Section 2. provides in relevant part:

"The President shall . . .

have Power, by and with the Advice and Consent of the Senate, to appoint . . . all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law:"

Section 3. provides in relevant part:

". . . take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States."

U.S. Constitution, Article III
Section 2. provides in relevant part:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, . . . between a State, or the Citizens thereof, . . .".

U.S. Constitution, First Amendment provides in relevant part:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

U.S. Constitution, Fifth Amendment provides in relevant part:

"no person shall . . .be deprived of life, liberty, or property, without due process of law ...".

U.S. Constitution, Fourteenth Amendment provides in relevant part:

> "Section 1. . . "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Commodity Exchange Act, 7 U.S.C. § 1, et seq., provides:

> 7 U.S.C. § 6 k(l). It shall be unlawful for any person to be associated with a commodity pool operator . . . unless such person is registered with the Commission (sic Commodity Futures Trading Commission, the "CFTC") . . . are obligated to register.

Applicable provisions of the Oath of Admission to the Florida Bar are:

> "I do solemnly swear:
>
> "I will support the Constitution of the United States and the Constitution of the State of Florida;
>
> "I will maintain the respect due to courts of justice and judicial officers;
>
> "I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;
>
> "I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

> "I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; . . ."

Applicable Florida Bar Rules are as follows:

> **RULE 3-7.16 LIMITATION ON TIME TO BRING COMPLAINT**
>
> **(a) Time for Inquiries and Complaints.** Inquiries raised or complaints presented by or to The Florida Bar under these rules shall be commenced within 6 years from the time the matter giving rise to the inquiry or complaint is discovered or, with due diligence, should have been discovered.[1]
>
> **RULE 4-1.7 CONFLICT OF INTEREST; CURRENT CLIENTS**
>
> **(a) Representing Adverse Interests.** Except as provided in subdivision (b), a lawyer shall not represent a client if:
>
> (1) the representation of 1 client will be directly adverse to another client; or
>
> **(b)** Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

---

[1] 3-7.16(b) contains an exception for allegations of theft or conviction of a felony criminal offense that are not relevant to this case.

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

(c) Explanation to Clients. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

RULE 4-1.9 CONFLICT OF INTEREST; FORMER CLIENT

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent;

RULE 4-1.16 DECLINING OR TERMINATING REPRESENTATION

(a) When Lawyer Must Decline or Terminate Representation. Except as stated in subdivision (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or law;

RULE 4-4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

RULE 4-1.6 CONFIDENTIALITY OF INFORMATION

(c) When Lawyer May Reveal Information. A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to serve the client's interest unless it is information the client specifically requires not to be disclosed;

RULE 4-8.4 MISCONDUCT

A lawyer shall not:

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;"

THE PROCEEDINGS BELOW

On June 27, 2005, upon the complaint of Steven A. Frankel, Esquire, one of its members, The Florida

Bar, filed a complaint in the Florida Supreme Court to allege that I had violated Bar Rules: 4-4.1(a) TRUTHFULLNESS IN STATEMENTS TO OTHERS (in the course of representing a client a lawyer shall not knowingly: (a) make a false statement of fact or law to a third person); 4-8.4(c) MISCONDUCT (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); 4-1.7(a) REPRESENTING ADVERSE INTERESTS (A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client); Rule 4-1.9(a) CONFLICT OF INTEREST; FORMER CLIENT (a lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interest of the former client unless the former client consents after consultation); and Rule 4-1.16(a)(1) DECLINING OR TERMINATING REPRESENTATION (A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if: the representation will result in violation of the Rules of Professional Conduct or law).

On August 1, 2005, I attempted to serve interrogatories upon Steven Frankel, Esquire, the Bar complaining witness, and Richard Wagner, supervisor division of enforcement, US Commodity Futures Trading Commission. Neither of them responded to the discovery.

The Referee denied my Motions to Compel Discovery. My Motion to Compel is App. F, page 50a.

On October 18, 2005, I filed a Motion for a Referee to be appointed in my case who did not look

to The Florida Bar for endorsement to seek judicial office and who was not a member of The Florida Bar. That Motion was denied on October 24, 2006.

On February 8, 2006, I filed my Response to the Bar Complaint with the Referee that included as Affirmative Defense XI, the lapse of the Six Year Statute of Limitations.

On June 18, 19, and 20, 2007, a hearing was held before a Referee.

References to testimony are to the three Volume Transcript of the Hearing before the Referee held from June 18 to 20, 2007 that was docketed in the lower Court by amended entry on May 29, 2009, under the generic heading "06/26/09: (Transcripts & Misc. Pleadings filed) (1 Box of Records)"; and, to the Transcript of the Hearing held before the Referee on April 28, 2009, on the Respondent's Motion for Dismissal for lapse of the Statute of Limitations docketed in the lower Court on May 11, 2009.

On August 21, 2007, the Referee filed his original Report to recommend that I be found guilty of the Conflict of Interest Rules, suspended for 18 months, with costs assessed to me.

On August 27, 2007, I filed a Motion to Dismiss the Bar Complaint to the Florida Supreme Court for failure of the Bar to bring its complaint within the six year statute of limitations or, in the alternative, the Referee's Report be remanded to the Referee. 8-27-07 docket entry.

On September 19, 2007, I filed my Petition for Review of the Referee's Report of August 21, 2007. 9-27-07 docket entry.

On January 30, 2009, the Court Denied, without opinion, my Motion to Dismiss for lapse of the Statute of Limitations, vacated the Report of Referee filed on August 27, 2007, and Remanded this case to the Referee for further proceedings.

On or about March 3, 2009, the three volume transcript of the hearing held before the Referee from June 18 to 20, 2007, was filed with the Referee.

On April 30, 2009, I filed my Petition for Review of the Denial of my Motion to Dismiss for the Statute of Limitations to the lower court.

On May 11, 2009, I filed the transcript of the proceedings before the Referee that considered my Motion to Dismiss for lapse of the Statute of Limitations on the record with the Florida Supreme Court. Vol SL 1.

On May 29, 2009, the Referee Amended Report was docketed to recommend the lower court to find that I had violated the Bar Rules to be truthful to third parties and conflict of interests and that I be suspended from the practice of law for 18 months, with costs assessed to me.

On May 29, 2009, the three volume transcript of the hearing held before the referee was docketed with the lower court by reference to a box of documents from the Referee.

On June 24, 2009, I filed my Petition for Review of all issues related to the case.

On July 1, 2009, the Florida Bar filed its Cross Petition for Review of the penalty.

On September 25, 2009, the Lower Court entered an Order to deny my Motion to Dismiss for lapse of the Statute of Limitations with leave to me to

request a ruling on my Statute of Limitations Motion in my Brief in support of my Petition for Review.

On October 13, 2009, I filed my brief on the merits that preserved, among other things, my Statute of Limitations defense.

On June 10, 2010, The Florida Supreme Court suspended me from the practice of law in Florida for three years by Opinion with a statement that, because the court had ruled on my prior Motion to Dismiss for the Statute of Limitations, no discussion of my Motion would be made in this opinion.

On June 21, 2010, I filed my Motion for Rehearing.

On July 6, 2010, my Motion for Rehearing was denied.

THE RECORD

The Lower Court Record consists of:

A. A three volume transcript of the hearing held before the Referee from June 18 to 20, 2007, hereinafter Ref Tr, Vol, I, II, and III. See box of materials from the Referee docketed to the lower court Court on 5-29-09; and

B. A one volume transcript of the hearing held on April 28, 2009, to consider my Motion to Dismiss for the Statute of Limitations docketed with the lower Court on May 11, 2009, hereinafter Ref Tr, Vol SL.

STATEMENT OF THE CASE

The documentation signed by Frankel is sufficient to prove that he either waived all conflicts or was never my client.

The testimony and documentation also demonstrate my good faith effort to comply with the truthfulness and conflict Bar rules.

This controversy is real because my license to practice law in Florida has been taken from me by the Supreme Court of Florida.

All other aspects of this case were staged by an undercover Federal and Florida law enforcement investigation of unregistered forex trading that was originally intended by my client, Richard E. Maseri, ("Maseri"), an undercover operative, to entrap me in an illegal act.

Before 1996, the United States Commodity Futures Trading Commission (the "CFTC") believed that the Commodity Exchange Act, 7 USC § 1, et seq. ("CEAct") authorized it to investigate forex brokerage.

Based upon that belief, it established a nationwide investigation of unregistered forex brokerage operations. Many of the investigations resulted in alleged CEAct violation enforcement actions. One of those actions resulted in a finding that the CEAct did not extend to regulation of forex brokerage. See *CFTC v Frankwell, et al*, 99 F.3d 299 (9th Cir. 1996).

In addition to pursuits of other enforcement actions before the Courts in other jurisdictions, the CFTC began to collect evidence of forex brokerage fraud to present to the United States Congress to have the CEAct amended in 2000 to specifically include forex brokerage.

The CFTC enlisted the United States Attorney General (the "USAG") and the Florida Statewide Prosecutor (the "FSP") to aid in the investigations

conducted in Florida. The FSP engaged various Florida law enforcement officers ("FLE") (collectively, the CFTC, USAG, FSP and FLE are hereinafter called the "Task Force").

By December, 1998, the Task Force had over 25 forex brokerage firms under surveillance in Florida. Ref Tr, Vol I, P 181, L 2 to L 6.

Maseri and Frankel worked undercover to collect evidence on behalf of the CFTC.

As evidenced by the SunSentinel News Article by Mitch Lipka published on December 16, 1998, ten forex operations were raided in one day by the Task Force. App. I, page 81a.

The picture in the news article shows a US Postal Inspector involved in the raid of the ICEC office. No mention is made of the CFTC in the article. Rather than the usual claim of credit for efforts expended, the CFTC went undercover in investigations to make its' presentation to Congress to amend the CEAct to include forex brokerage appear to be based upon evidence collected by independent third parties.

At the outset of the investigation in Florida, the Task Force learned that many of the forex brokerage sales people operated from home offices. Home office telephone line taps were difficult to obtain. In addition, the initial collection of information resulted in few egregious examples of forex fraud.

To overcome these two deficiencies, the CFTC made a business arrangement with Prudential Securities, Inc. ("Prudential") to induce forex sales people to an office where they could be monitored and to create public customer fraud that would be certain to justify amendment to the CEAct to include forex brokerage.

Prudential, for a fixed legal fee of $5,000, retained Steven A. Frankel ("Frankel"), a member of the Florida Bar, under the protection of Florida Bar Rule 4-8.4(c) which affords an exception from claim of Bar misconduct to a lawyer who provides legal advice to an undercover investigation, to form a forex brokerage company with Richard E. Maseri (Maseri"), an undercover US Government operative.

The protection of Bar Rule 4-8.4(c) was provided to Frankel, the Bar complaining witness against me, without affording me equal protection under the First, Fifth and Fourteenth Amendments to the United States Constitution to complain about his conduct and to represent the innocent members of the public harmed by the undercover operation.

Prudential supplied $185,000 seed money to Frankel to establish the forex brokerage to operate to be called International (a/k/a Intercontinental) Currency Exchange Corporation ("ICEC").

The Task Force/Prudential/Maseri/Frankel plan was for ICEC to construct a modern office in Florida to supply investment research, computer terminals, live quotes, bookkeeping support, regulatory compliance and other similar benefits to lure forex sales people from their home offices to a location where they could be monitored. Frankel and Maseri would form ICEC as a Florida corporation and have a stockholder agreement where they would be 50% owners.

Maseri retained me to represent him in the negotiation of the ICEC stockholder agreement with Frankel. Upon receipt of the first draft of the ICEC shareholder agreement from Frankel, I sent Maseri a letter to provide my comments. App. J, page 83a.

Among my suggestions was the insertion of language that both parties had been afforded the opportunity to seek legal counsel of their choice. Frankel responded that it was not necessary to insert this language as Maseri was represented by me and Frankel was licensed to practice law in Florida and New York. App. O, page 98a, item 4.

Another of my suggestions contained at the third bullet in App. J, page 83a was that ICEC had to be operated from within the Ninth Circuit to be legal because ICEC, Frankel, and Maseri planned not to be registered under the CEAct and, therefore, they needed the protection of the *Frankwell* decision cited above to avoid accusations from the CFTC that CEAct registration was required to operate ICEC as a forex brokerage.

Frankel insisted that ICEC operate in Florida. He also wanted Maseri obligated to perform certain functions under a personal services agreement that would have been a violation of an outstanding Federal injunction against Maseri entered in *CFTC v Maseri, et al*, at case number 95-6970 then pending before the United States District Court for the Southern District of Florida.

I told Maseri under no circumstances could he operate in Florida or sign a personal services agreement. Frankel sent me a memo on July 29, 1998, to tell me his reactions to my comments. App O, page 98a.

I sent the memo to Maseri. Maseri had Frankel call me to discuss these issues. In response to my explanations, Frankel told me he accepted the location of ICEC to be Newport Beach, California,

within the 9th Circuit, and that there would be no personal services agreement with Maseri.

The Florida Supreme Court accepted the facts submitted by the Referee.

The Referee held if Maseri had followed my advice, he would have operated ICEC without violation of an outstanding injunction against him. Ref Amd Report, App. B, page 21a, at page 24a, note 2.

My opinion that the operation of ICEC within the US Ninth Circuit in accordance with my instructions to Maseri would have been perfectly legal has not been contested.

Maseri ignored my advice that would have made ICEC a legal operation within the US Ninth Circuit.

Instead, without my knowledge, he and Frankel, as 50% owners, moved ICEC CA and NV from the US Ninth Circuit to the US Eleventh Circuit where it was exposed to the CFTC claim that they, Frankel, and Maseri operated without proper registrations under the CEAct.

In addition, contrary to the *Frankwell* guidelines and applicable CEAct commodity pool law, Frankel and Maseri put all of the ICEC customer money in a single account at Prudential Securities, Inc. ("Prudential") with Maseri as the sole signatory rather than in segregated accounts in the name and upon the sole signatory authority of each customer.

While Frankel was not held criminally or civilly liable for his participation in the operation of ICEC within the US Eleventh Circuit, I was denied equal protection and substantive and procedural due

process by the Florida Supreme Court's refusal to consider my good faith conduct and defenses.

Also, my attempts at discovery to prepare for the hearing were denied.

In January, 1999, ICEC filed a response in the case of *Prudential v CFTC, et al*, at USDC for the Southern District of Florida case number 98-8891 that included a list of ICEC customers by name and amount deposited to their ICEC account that was served upon Barry R. Davidson, Esquire, ("Davidson"), the receiver appointed in the USDC for the So. Dist. of Florida Case number 95-6970, *CFTC v Maseri, et al.*, to collect Maseri's assets for the benefit of persons unrelated to ICEC or its customers. A copy of the list is attached as App. G, page 73a.

Justice would have been served had Davidson used the list of customers to confirm that the deposits were made and immediately returned the money to the ICEC customers.

Davidson refused the ICEC demands that he make immediate payments to the ICEC customers. Instead, over ICEC and certain of its customers' objections, Davidson performed work that was unnecessary to ICEC and its customers to run up fees and costs in excess of $155,000 that were approved for payment from the ICEC customer accounts by the USDC for the Southern District of Florida in the unrelated case of *CFTC v Maseri, et al*, at case number 95-6970.

When the ICEC customers received less than 100% return of their deposits, certain of them retained me to bring a civil action against Frankel and Maseri, as 50% owners of ICEC, for restitution

in the USDC for the So Dist of Florida at case number 02-60565, *Investcan, et al v Frankel, et al*.

To prevent a finding that Davidson was overpaid, the United States District Court for the Southern District of Florida entered an Order on October 4, 2002 in the *Investcan,* case to disqualify me as counsel for the ICEC customers for *an appearance* of conflicts with an alleged prior representation of Frankel. App. D, page 44a.

The Order to disqualify me was entered without affording me a hearing to cross examine Frankel and present a record of my good faith behavior. App. D, 44a.

Certain of the ICEC customers appealed the disqualification Order to the US Circuit Court of Appeals for the Eleventh Circuit at case number 02-16312, *Investcan, et al v Frankel*.

Neither Frankel nor I contested the use of "*it appears*" language in the disqualification Order – Frankel was satisfied with that language and I denied ever representing Frankel to the 11th Circuit, yet the 11th Circuit, without being asked, found that I had absolutely violated Fla Bar Rule 4-1.9. Compare App. C, page 42a with App D, page 44a.

I denied that Frankel was ever my client or had any other relationship with me that would cause a confidential relationship. The documents signed by Frankel confirm my denial.

On July 29, 1998, Frankel sent me a memo to say he would be his own lawyer. App. O, page 98a, Item 4.

On December 6, 1998, there existed the possibility that the money on deposit in the ICEC

accounts at Prudential was sufficient to make 100% restitution to the ICEC customers. Ref Tr Vol III, P 400, L 3 to 9.

On December 18, 1998, Frankel signed a retainer agreement that included a representation that I had explained the potential conflicts of interest among the ICEC depositors and afforded Frankel the opportunity to obtain legal counsel of his choice. The intent of this document was to limit my representation to seek return of the ICEC accounts that held Frankel's money, not represent Frankel, to permit me to represent ICEC and its customers against Frankel should the money on deposit at Prudential be insufficient to provide 100% restitution to the ICEC customers. App. P, page 100a.

On December 21, 1998, Frankel signed an addendum to the November 30, 1998, ICEC retainer agreement to specifically acknowledge that I had never been his attorney. A copy of the ICEC retainer and the Frankel addendum are included at App. H, page 77a.

Frustrated that he could not get me to approve an illegal operation, on August 4, 1998, in a meeting that was scheduled among Maseri, Frankel and me, Frankel set up a plan to entrap me to be responsible for ICEC without regard to where it operated.

Prior to Maseri's arrival, at the meeting, Frankel asked me questions. He provided the following explanation of his conversation with me in a statement he gave to Broward County law enforcement on February 22, 1999, which was read into the record in this case as follows:

> Q. Referring to Page 18 read into the record the highlighted material, please.

A. "One of the things I did do at that meeting was confront Mr. Scott directly and ask him how long he knew Mr. Maseri and what his relationship was with Mr. Maseri. Can you answer those as you go along -- he told me that he knew Mr. Maseri for about ten years. I asked him do you know if that in fact was true. I don't know if that's true. That's what he told me. What else did he tell you? I asked him what he knew about Mr. Maseri, and if he knew anything detrimental about Mr. Maseri. His response to me was that 'Mr. Maseri, that he had tricked, he being Mr. Scott, had traded currency with Mr. Maseri and that Mr. Maseri had never lied to him'. And that is the total response."

Frankel testimony Vol II, P 249, L 22, to P 250, L 9; Resp Ex I, App Q, page 103a.

Frankel testified that my answers *indicated* to him that Maseri was an honest man.

The Referee elevated Frankel's claim of indication of honesty to a finding that I had specifically said Maseri was an honest man. The Referee qualified this finding by the statement that had I not specifically represented to Frankel that Maseri was an honest man, I would have not had an obligation to disclose unfavorable information about Maseri. App. B, page 21a, at pages 25a and 26a.

The lower court quoted the Referee finding that I had specifically said Maseri was an honest man. App. A, page 1a, at page 9a. Admittedly, my intention was to imply that Maseri was an honest man, but Frankel's impression and my intent are not relevant.

What I said was that Maseri had never lied to me. My intent was to preserve Maseri's honest business relationship with Frankel. Maseri was my client, not Frankel. My obligation was to tell the truth. And that is what I did.

That my intent and Frankel's beliefs from my factual statement are irrelevant is supported by a clear reading of Fla Bar Rule 4-4.1(a) which provides:

> "In the course of representing a client a lawyer shall not knowingly:
>
> **(a)** make a false statement of material fact or law to a third person; or"

Frankel admitted on the record that he had no evidence that prior to August 4, 1998, I had knowledge that Maseri had lied to me. And, I testified that prior to August 5, 1998, I believed Maseri had never lied to me. My answers were truthful. They also were immaterial. The proposed business was to be honest. Maseri's past was irrelevant.

No record of crime, however long, makes a person an outlaw. *Olmstead v United States*, 277 U. S. 438, 485 (1928), (Dissenting Opinion of Mr. Justice Brandies).

The lower court got around the truthfulness of my answers by expansion of my obligation to be that I must not intend to mislead Frankel. App. A, page 1a, at pages 10a and 11a.

That expansion of obligation was without notice to me or included in the Florida Bar Rules.

The lower court finding is a violation of my First Amendment right to free speech as it imposes an obligation upon me to identify Maseri as the Court

directs rather than consistent with my best judgment of Maseri's intent and my lawyer's oath to serve Maseri.

Upon Maseri's arrival at the August 4, 1998 meeting, I told him that Frankel had asked me questions that appeared to be an attempt to make me responsible should anything go wrong with ICEC and that I wanted to resign as Maseri's attorney and refuse to be legal counsel for ICEC.

Maseri responded that he needed to go forward with the agreement reached on August 3, 1998, for me to prepare the ICEC new account forms. I agreed. Frankel needed my effort to complete the ICEC new account forms to continue his business venture to the same extent as Maseri. The ICEC new account forms retainer was signed by Maseri, Frankel, and me. App K, page 85a.

I delivered the new account forms to Maseri in hard copy and email within the ten day period provided in the retainer agreement. The forms provided Newport Beach, CA as the location for the ICEC CA office where customers would return their signed forms and account deposits. My advice to Maseri was that all sales people had to be located within the 9th Circuit as well.

To separate me from the move of ICEC from the 9th Circuit to Florida, Maseri and Frankel formed another ICEC without my involvement in Nevada ("ICEC NV") on August 8, 1998. Ref Tr Vol III, P 375, L 23 to P 376, L 7.

In spite of my advice that the operation had to operate from within the Ninth Circuit, Frankel was induced to agree to move ICEC CA and NV to Florida upon reliance of the representation from Maseri that

I would never again be contacted and immunity from assertion of wrongful conduct provided by Fla Bar Rule 4-8.4.

On November 25, 1998, Maseri breached his agreement with Frankel by a call to ask me to use my best efforts obtain a release of a freeze of the ICEC accounts at Prudential.

On December 5, 1998, upon investigation, I learned that (i) ICEC CA and NV had been operated, including a sales effort, from an office in Weston, FL, (ii) all of the ICEC NV customer money was deposited in a single account with Maseri as the sole signatory rather than in the name of each customer with only the customer having the right to sign for the account, and (iii) CEAct regulated futures trades had been placed in the ICEC CA and ICEC NV accounts.

REASONS TO GRANT THIS PETITION

I. To review law enforcement procedures that inhibits the honest administration of justice.

These facts were evidence of civil liability by Frankel and Maseri to the public customers they induced to open forex brokerage accounts with ICEC. My uncontroverted testimony on the record in this case is as follows:

> ". . . On or about December the 6th, I determined that ICEC was an intentional fraud from the get go.
>
> Now, I explained that it had to do more than just be incorporated (sic in California). That's just fluff. You have to actually operate out of there. Both of them represented to me that their sales

> office was going to be in Newport Beach, California.
>
> . . . one, they didn't operate with segregated accounts. And both Frankel and Maseri knew better. They put all of the money in a single account, which is also an exhibit that's been introduced in this case, listing all the names of the people that (sic deposited) the money into Prudential. That was all put in a single account under Maseri's sole name. It's absurd:
>
> . . . in order to put it in a single account you have to be a commodity pool operator because you're automatically a commodity pool operator if you have more than 14 clients and more than $250,000.00 in 1998. The list has far more than $250,000.00, and there are far more than 15 persons, . . ."
>
> Ref Tr Vo III, P 395 L 3, to P 397 L 10, App. R, page 106a.

Because Maseri was made the sole signatory on the ICEC accounts at Prudential, Barry R. Davidson, Esquire, also a member of The Florida Bar, the Federal Court appointed receiver to collect the assets of Maseri to pay to customers in the unrelated case of *CFTC v Maseri, et al*, at United States District Court for the Southern District of Florida case number 95-6970, had a color of right to claim that Maseri had a personal interest in the ICEC customer accounts.

Task Force Detective John Calabro testified that the US Department of Justice Federal Bureau of Investigation (the "FBI") and the US Attorney's office formed a task force to investigate telemarketing fraud. Ref Tr Vol I, Page 164, L 16 to Page 165, L 1.

Detective Calabro further testified that the FBI raided 25 telemarketing operations on December 15, 1998. Ref Tr Vol I, P 181, L 2 to L 6.

Florida law enforcement held Frankel blameless for his move of ICEC from the 9th Circuit to the 11th Circuit and his refusal to defend the ICEC customers from loss when he was named a defendant in the Prudential case.

The Florida Bar allowed Frankel to complain and appear as its witness to attack my right to practice law.

Over ICEC's objection, on Davidson's Motion, the United States District Court for the Southern District of Florida, transferred the ICEC corporate and customer accounts to Davidson to administer in the unrelated to ICEC case of *CFTC v Maseri, et al*, at USDC for the Southern District of Florida case number 95-6970.

The Florida Bar Rules specifically provide:

(b) Notwithstanding the existence of a conflict of interest under subdivision (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.

No discussion is made in the Florida Supreme Court Opinion or the Amended Referee Report of my reasonable beliefs. To the contrary, the Court ruled that the conflict of interest between Frankel and me was so fundamental that it could not be condoned by the client (sic Frankel), even with full disclosure with citation to *The Fla. Bar v Feige*, 596 So.2d 433, 434; *The Fla. Bar v Ward*, 472, So. 2d 1159 (Fla. 1985) as authority.

Feige and Ward are not applicable to this case. In those cases, the subject lawyer committed fraud. In this case, it was the alleged client, Frankel who committed the fraud.

When I found the ICEC frauds in December, 1998, I obtained his written waiver of conflicts and acknowledgement that I had never been Frankel's lawyer to be certain that I could represent ICEC and its customers to obtain 100% restitution, including an action against Frankel, if that were necessary. App. P, page 100a.

The reference to this December 18, 1998, document as a retainer is not relevant, it is the content that counts. The lower court nor the referee discussed the reference in App P., page 100a, of the explanation of the conflicts among the depositors; i.e., the ICEC customers had a right to return of their money before Frankel would receive any return of his money. App. P, page 100a read with the Frankel acknowledgement that I had never been his attorney contained in the Addendum to App. H, page 77a make it clear that Frankel intended to waive all

conflicts to preserve my right to represent ICEC and its customers against him, if necessary.

Once conflicts are waived, they remain waived without evidence of a new relationship. No evidence of a new relationship exists.

In a meeting held in my office on December 6, 1998, Frankel and Maseri told me that the money on deposit at Prudential was sufficient to make 100% restitution to the ICEC customers.

A separate fraud was committed against ICEC and its customers by Davidson. Rather than remit the ICEC deposits to the ICEC customers, Davidson ran up fees and costs in excess of $155,000 for work that did not concern ICEC and its customers. The charge of $155,000 by Davidson made 100% restitution impossible.

What I said to Frankel on August 4, 1998, was not material to his loss. His move of ICEC from California to Florida and the actions of the Receiver caused his loss.

On January 1, 2001, upon representation that all parties had agreed, the USDC for the Southern District of Florida dismissed the *Prudential v CFTC*, et al case at No. 98-8891. App. N, page 97a.

ICEC and many of its customers had their appearance on file in the Prudential case. None of them agreed to the dismissal of that case.

To the contrary, ICEC and many if its customers requested continued supervision of Davidson in the Prudential case rather than for Davidson to act in the *CFTC v Maseri, et al*, case at number 95-6970, where ICEC and its customers were not parties.

Without discussion of my defenses or good faith behavior, the Florida Supreme Court suspended me from the practice of law.

The Florida Supreme Court held me responsible for conflicts of interest explained in the Referee Amended Report with persons totally separate from any persons who were my clients.

Prudential, Private Research, the customers of Maseri in the prior case that involved Maseri, were unrelated to ICEC and the ICEC clients who retained me.

Private Research was my client in the prior Maseri case, but it had no interest in the ICEC case.

The claimed conflicts among the depositors or ICEC and its customers are pure fiction. ICEC never claimed ownership of its customers' money, only that the customers had a superior right to return of their deposits than Frankel had to the return of his loan.

No person had any right to make a claim of conflicts against me. And, this case concerned only the complaint from Frankel.

Frankel agreed with me on December 6, 1998, that the ICEC customers came first. The is confirmed by the fact that Frnakel made no objection when the Receiver subordinated his loan to the interests of the customers at the time the Receiver made his distribution of what remained of the ICEC deposits after deduction of his fees and costs.

The Federal and Florida legal systems withheld facts from the ICEC customers and me under the guise that the prosecution of Maseri was in progress. On the release of Frankel transcripts and other documents by the Broward County, Florida, State

Attorney, I was made aware that the CFTC was the motivating force behind the establishment of the ICEC operation in Florida.

On March 21, 2005, I sent a letter to Maureen Donlan, Esquire, Assistant US attorney who served as legal counsel to the CFTC in the Prudential case to ask questions to justify the reopening of the Prudential case to seek 100% restitution for the ICEC customers. My letter was admitted into evidence as Exhibit 51 to The Florida Bar hearing. App. M, page 92a.

Neither Ms. Donlan nor any of the persons receiving copies of my March 21, 2005, letter responded. Instead, I was met with The Florida Bar complaint initiated by Frankel on June 27, 2005.

The acceptance of this case will permit this Court to review the quality of Federal and Florida Executive Branch supervision of law enforcement that allows undercover operations to cause damage to the public. Particularly, the right of the US Executive Branch to withhold information in civil cases that would allow the public to recover for the losses they sustain as a result of undercover operations.

And, should lawyers who expose other Bar member frauds be subjected to slap back Bar proceedings.

II. To review due process applicable to attorney license discipline proceedings.

Claims made by the Bar must be brought within six years. Rule Regulating the Florida Bar 3-7.16(a) quoted above. Fla Bar Amendments to Rules Reg. Fla Bar, 658 So. 2nd 930 (Fla 1995).

A statute of limitations defense runs from the time the cause of action accrues which, in turn, is generally determined by the date when the last element constituting the cause of action occurs. *Hearndon v Graham*, 767 So. 2d 1179 (Fla 2000).

Specifically, the beginning date for a statute of limitations to run on Bar misrepresentation claims is the date of the alleged statement and on the conflicts of interest claim is the date of notice by the attorney of the potential conflict and the intent of the attorney to represent interests that are in conflict with the alleged client. *Fla Bar v Barrett*, 897 So. 2d 1269 (Fla 2005); *Fla Bar v Walter*, 784 So. 2d 1085 (Fla 2001); *Scott v Fla Bar*, SC 08-2227 (Fla12-8-08).

My alleged misstatement of fact was claimed to have been made on August 4, 1998. On August 4, 1998, Frankel, represented in the retainer from ICEC for me to prepare the customer account forms that he was afforded the opportunity to seek legal counsel of his choice. His choice of legal counsel was that he would represent himself. Bar Ex 9, Vol II, P 226, L 20 to P 227, L 16.

My alleged representation of Frankel began on December 18, 1998 when I presented him with notice of the conflicts among the depositors and that I would represent ICEC and the customers. App. P, page 100a.

The allegation of conflicts was the result of claimed representation of Frankel that occurred prior to December 21, 1998. On December 21, 1998, Frankel signed an addendum to state that I had never represented him.

On January 15, 1999, Vail Gardner, Esquire, sent me a letter that refers to a letter she received dated December 23, 1998, to identify Dennis Eisinger, Esquire, as the attorney for Frankel. App. S, page 110a. Ex 18,Ex DD and R; Frankel, Vol II, P 305, L14 to P 306 L 6.

There are no statutory tolling provisions applicable to Bar claims of misrepresentation or conflicts of interest. The party who seeks to escape the application of the statute of limitations bears the burden of proving circumstances that would toll the statute or demonstrate that the statute is not applicable to the facts. *Landers v Milton*, 370 So. 2d 368, 370 (Fla. 1979).

No record facts were presented in this case or any applicable law presented by the Florida Supreme Court to justify the denial of the dismissal of the Bar Complaint for failure to file within six years.

My license to practice law, once vested, was a property right subject to divesture or suspension only upon satisfaction of due process of law. *Sheiner v State*, 82 So. 2d 657, 662-663 (Fla. 1955).

The Bar Complaint was filed on June 27, 2005. SC 05-1145 - Florida Supreme Court Opinion, App. A, page 1a.

The filling of the Bar Complaint is beyond six years from the date my alleged wrongful answers and notice of intent to represent ICEC provided to Frankel. Frankel signed the agreements of December 18 and 21, 1998 to induce me to continue to attempt to get the ICEC accounts released as ICEC lawyer with full knowledge that if 100%

restitution was not made to the ICEC customers, I would sue him on behalf of the customers.

Once the defense of the statute of limitations has accrued, it is protected as a property right interest. *Wood v Eli Lily & Co.*, 701 So2d 344, 346 (Fla 1997); *Wiley v Roof*, 641 So. 2d 66, 68-69 (Fla. 1994); *In Re Estate of Smith*, 685 So. 2d 1206, 1210 (Fla 1966), cert. denied, 117 S.Ct.. 2434 (1997); *Mason v Salinas*, 643 So. 2d 1077, 1078 (Fla 1994).

The lack of application of the Statute of Limitations is a denial of substantive and procedural due process guaranteed to me by the Fifth and Fourteenth Amendments to the United States Constitution.

A successful appeal based upon the toll of the statute of limitations renders all other issues moot. *Haskins v City of Ft. Lauderdale*, 898 So 2d 1120, 1123 (Fla 4th DCA 2005).

This court reviews my Statute of Limitations defense de novo. *Cooper Industries, Inc. v Leatherman Tools Group, Inc.*, 532 U. S. 424 (2001).

The Florida Bar Rule 4-1.7(b)(1) and (2) quoted above, allows me to exercise my judgment of when the representation of a former client will prevent the representation of a current client provided no law prevents the representation.

Without waiver that I never represented Frankel, it is my opinion that my obligation to use my best efforts to obtain 100% restitution on behalf of the ICEC customers was superior to the right of Frankel to claim conflicts of interest. Frankel came to court with unclean hands.

The Florida Bar Disciplinary Rule 3-7.6 Procedures Before a Referee provides in paragraph (f)(2) Discovery as follows:

> (2) *Discovery.* Discovery shall be available to the parties in accordance with the Florida Rules of Civil Procedure.

Florida Rule of Civil Procedure 1.280 (c) provides for protective orders as follows:

> "(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; . . ."

The Referee denied my Motion to Compel discovery of Frankel and Wagner. They were believed by me to have knowledge of the Task Force structure and operation. Without waiver that my personal knowledge of the ICEC events is sufficient to support my contentions that law enforcement facilitated the ICEC depositor losses, had I been permitted to engage in discovery, those positions would have been confirmed.

The Referee is a Judge of the Florida Circuit Court. See signature line on the Amended Referee Report. App. B, page 21a. The Florida Bar routinely comments on the fitness of judicial candidates.

The Referee appeared biased because he denied my Motion to Compel Discovery and suggested answers to Frankel during my cross examination.

All of the judges who have reviewed this case on behalf of the State of Florida are members of The Florida Bar. They look to The Florida Bar for endorsement to attain their positions.

In addition they have all decided to protect Davidson and Frankel, their favored members, over me because The Florida Bar, a labor union, desires to protect the income of its members appointed as Federal Receivers and as lawyers for Executive Branch law enforcement.

The USDC for the Southern District of Florida Judge that entered the disqualification Order against me in the *Investcan* case had a bias against allowance of the ICEC customer complaints to proceed against Frankel because that same judge approved excessive Receiver fees and costs that were paid from the ICEC customer money that would have become an issue had the customer claims against Frankel gone forward.

My clients' interests in quality legal advice and protection by the courts have been relegated to a secondary position behind those Bar interests by the bias of these judges and the rules adopted by the lower court and the Bar to protect their favored members.

When analyzing the establishment of an integrated, captive Bar association in Wisconsin similar to the one established by the Florida Supreme Court, Justice Douglass, in his dissent in *Lathrop v Donohue*, 367 US 820, 884, (1961), opined that it was clear from the facts in *Cohen v. Hurley*, 366 U. S. 117 (1961) that the Bar and Bench do not move to a single "nonpartisan" objective.

Justice Douglass further clairvoyantly predicted that once an integrated Bar was approved, a device would be in place where men and women in almost any profession or calling can be at least partially regimented behind causes which they oppose.

In this case, I am opposed to the use of Bar Rules to authorize conduct by Frankel to move ICEC from the 9th Circuit to the 11th Circuit and to the taking by charge of excessive fees and costs of my clients' money by Davidson. No prosecutions have been brought against either Frankel or Davidson.

Justice Douglass further opined that brigades of lawyers in integrated Bar associations are not compatible with the First Amendment. While the legislature has few limits where strictly social legislation is concerned [*Giboney v. Empire Storage Co.*, 336 U. S. 490 (1949); *Tot v. United States*, 319 U. S. 463 (1943),] the First Amendment applies strictures designed to keep our society from becoming molded into patterns of conformity which satisfy the majority.

My free speech right to explain that the ICEC customers were entitled to receive 100% restitution to Maureen Donlan, Esquire, App. M, page 92a, and other regulatory authorities suffered diminished credibility by the removal of my license to practice law by The Florida Supreme Court and those in control of its integrated Bar.

Without waiver that Frankel was never my client and that the documents he signed preserved my right to represent ICEC and its customers against him, my oath as an attorney obligated me to place Bar rules and any rights Frankel would have to claim conflicts in an inferior position to my obligation

to obtain 100% restitution for the innocent members of the public who lost their money because of the intentional CEAct violations Frankel committed.

Staged law enforcement events that damage members of the public must never be condoned by the maxim "the end justifies the means". *Romer v Evans*, 517 US 620 (1996); *United States v Virginia*, 518 U. S. 515 (1996). The lower court denied that this argument exists. App. A, page 1a, at page 12a.

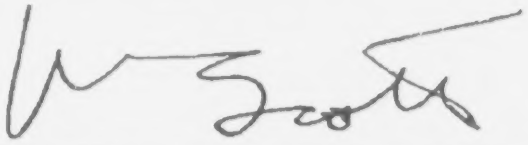
CONCLUSION

The present posture of this case sends the message that serious negative consequences will be imposed against lawyers who complain to legal system administrators of the wrongs committed by government officials, judges, and other lawyers.

This Court is requested to accept this case to review how to best send the message to government and legal system members that their oaths of office are to be respected.

ACCORDINGLY, this Court is requested to accept this case for review.

Respectfully submitted,



William Sumner Scott, *Pro Se*
3109 Grand Avenue, #183
Miami, FL 33133

305 961-9949
04wmscott@comcast.net

September 29, 2010

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Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM SUMNER SCOTT

Petitioner

v.

THE FLORIDA BAR

Respondent

On Petition for Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI VOLUME II OF II APPENDIX

William Sumner Scott, *Pro Se*
3109 Grand Avenue, #183
Miami, Florida 33133

Telephone (305) 961-9949
04wmscott@comcast.net

APPENDIX TABLE OF CONTENTS

Page

APPENDIX A: Supreme Court Opinion dated June 10, 2010 ..... 1a

APPENDIX B: Amended Report of Referee..... 21a

APPENDIX C: United States Court of Appeals for the Eleventh Circuit Decision..... 42a

APPENDIX D: United States District Court Opinion to Disqualify 44a

APPENDIX E: Order to Deny Rehearing Petition 49a

APPENDIX F: WSS Motion to Compel Discovery 50a

APPENDIX G: List of ICEC customers and amounts on deposit 73a

APPENDIX H: December 21, 1998, Frankel Addendum - ICEC Retainer and Frankel Addendum 77a

APPENDIX I: December 16, 1998, SunSentinel News Article..... 81a

APPENDIX J: WSS suggested changes to ICEC First Draft - Comments to Maseri..... 83a

APPENDIX K: WSS retainer to prepare ICEC new account forms 85a

APPENDIX L: WSS decline of ICEC general counsel opportunity..... 90a

APPENDIX M: March 21, 2005 letter from WSS to Donlan 92a

APPENDIX N: USDC Order to close Prudential case 1-4-2001 ..... 97a

APPENDIX O: Frankel Facsimile Memo of July 29, 1998 ..... 98a

APPENDIX P: Frankel Waiver of Conflicts Agreement dated December 18, 1998..... 100a

APPENDIX Q: Excerpt from Referee Hearing Transcript Volume II 103a

APPENDIX R: Excerpt from Referee Hearing Transcript Volume III 106a

APPENDIX S: Letter from Gardner to WSS 110a

Appendix A

Supreme Court of Florida

No. SC05-1145

THE FLORIDA BAR,

Complainant,

vs.

WILLIAM SUMNER SCOTT,

Respondent.

[June 10, 2010]

PER CURIAM.

We have for review a referee's report recommending that William Sumner Scott be found guilty of professional misconduct and suspended from the practice of law for eighteen months. We have jurisdiction. See art. V, § 15, Fla. Const. We approve the referee's findings of fact and recommendations regarding guilt. But we disapprove the sanction recommendation and instead impose a three-year suspension.

FACTS

The referee found that The Florida Bar proved the following facts by clear and convincing evidence.

In 1995, Scott represented Richard Maseri's company, Private Research, Inc., in a suit for an injunction filed by the Commodity Futures Trading Commission (CFTC) in the United States District Court for the Southern District of Florida—Commodity Futures Trading Commission v. Maseri, No. 95-6970- CIV-DAVIS (S.D. Fla. complaint filed Oct. 16, 1995). The CFTC complaint alleged that

Maseri and Private Research defrauded customers, converted customer funds, and violated the registration provisions of the Commodity Exchange Act (the Act), 7 U.S.C. §§ 1-27f (1994), and CFTC Regulations, 17 C.F.R. §§ 1-199 (1995). The court issued preliminary injunctive orders and, in 1997, made them permanent. The orders prohibited Maseri and Private Research from contracting for the sale of any commodity; acting directly or indirectly as a commodities trading advisor (CTA) or commodities pooling operator (CPO) without being registered as such; and engaging in any fraudulent activities while acting as a CTA or CPO.

In the summer of 1998, Maseri advertised for investors for a commodities brokerage venture. Steven Frankel, who was unaware of Maseri's previous history, responded to the advertisement. In July 1998, Maseri hired Scott to represent him in negotiations with Frankel aimed at establishing a forex brokerage company.[1] In August 1998, Maseri and Frankel created International Currency Exchange Corporation, a Nevada corporation, later renamed Intercontinental Currency Exchange Corporation (ICEC). They each owned a fifty-percent share of the company. They met, along with Scott, on August 4, 1998, to sign the stockholders' agreement. Before Maseri arrived for the meeting, Frankel questioned Scott about Maseri. Scott failed to tell Frankel about CFTC's suit against Maseri, the court order prohibiting Maseri from entering into certain business transactions, or Maseri's criminal history, even though this information was public and

---

[1] Frankel testified before the referee that a forex brokerage company is a currency exchange brokerage company.

nonconfidential. During the course of their conversation, Scott made statements to the effect that Maseri was "an honest man."

During the August 4 meeting, Scott agreed to represent ICEC. At a minimum, Scott agreed to prepare new account form documents for ICEC. Frankel put up $5000 in equity for the venture and loaned ICEC $180,000.

In November 1998, the federal court entered a final order of judgment against Maseri in the Maseri case. Prudential Securities, Inc. (Prudential), as a holder of ICEC assets, filed an interpleader action against CFTC in the United States District Court for the Southern District of Florida and notified ICEC that its assets would be frozen until released by the court. Prudential Securities, Inc. v. Commodity Futures Trading Commission, No. 98-8891-CIV-MIDDLEBROOKS (S.D. Fla.). Maseri, as ICEC's president and chief operating officer, hired Scott to attempt to unfreeze ICEC's assets.

Frankel was unaware of these events until December 15, 1998. On that date, because he was unable to contact Maseri by telephone, he drove to the office and discovered that law enforcement officers had raided ICEC. At that point, Maseri told Frankel about his problems with the CFTC and referred him to Scott.

Frankel contacted Scott, who told him that he had been retained to represent ICEC and, since Frankel had loaned ICEC money, he would be representing Frankel in getting his funds released to him. On December 18, 1998, Frankel entered into a retainer agreement with Scott in which Scott agreed "to attempt to have the accounts which hold your

funds at Prudential released."[2] Three days later, Frankel signed an addendum to his retainer agreement with Scott in which "Frankel, not as a Director, but as a lender to ICEC," ratified, adopted, and approved his earlier hiring of Scott.

ICEC also maintained accounts at Donaldson, Luftkin & Jenrette (DLJ). These accounts were controlled by Dreyfus Service Corporation (Dreyfus). In 1999, Dreyfus, like Prudential, filed an interpleader action in the United States District Court for the Southern District of Florida. Dreyfus Service Corp. v. Intercont'l Currency Exch. Corp., No. 99-6151-CIV-DAVIS (S.D. Fla.). Scott, on behalf of ICEC investor Moresea, Ltd., filed a counterclaim against Dreyfus and a third-party complaint against DLJ, alleging that ICEC had conducted business in an illegal manner.

On January 6, 1999, Scott filed a petition for emergency relief on behalf of ICEC in the Prudential interpleader action. The petition included a cross-claim against Prudential on behalf of ICEC investors.

On January 15, 1999, the federal district court supplemented the final judgment in the Commodity Futures Trading Commission v. Maseri case to make ICEC subject to receivership. As a result, ICEC's assets went into receivership. The receiver notified Prudential that ICEC's assets were to be turned over to satisfy the judgment.

On February 9, 1999, on behalf of ICEC investor Investcan, Ltd., Scott filed an answer and a

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[2] The agreement reflects that Scott was retained by ICEC on November 30, 1998, but was terminated on December 12, 1998.

counterclaim against Prudential, alleging that Maseri and ICEC had operated in violation of Florida law. Prudential wrote to Scott on February 12 and 19, 1999, to object to his dual representation of ICEC and its investors on the basis of conflicts of interest. Despite Prudential's objection, Scott filed a counterclaim on February 24, 1999, on behalf of ICEC investors Roger Lennon and The Lennon Trust.

The court in Prudential dismissed the ICEC investors' cross-claim on March 17, the Investcan cross-claim on April 13, and the Lennon counterclaim on April 19. Scott filed a first amended counterclaim against Prudential on behalf of ICEC investors on April 23; that counterclaim also asserted unlawful conduct by ICEC.

The court dismissed the Dreyfus case on June 14, 2000, and the Prudential case on January 4, 2001. Prudential released the ICEC funds to the receiver. Scott tried to reopen the Prudential case over a year later, on January 18, 2002, and to file a cross-claim against his former client Frankel on behalf of ICEC and its investors/depositors for breach of contract, legal malpractice, and fraud. The court denied his motion on February 4, 2002. That same day, Scott filed a motion on behalf of Investcan, seeking joinder to the cross-claim against Frankel. On February 13, Scott filed a motion to reconsider reopening the Prudential case on behalf of ICEC and all persons who opened an account with ICEC.

Meanwhile, on January 29, 2002, the federal district court in Commodity Futures Trading Commission v. Maseri issued an order discharging the receiver and granting the receiver's final report of distribution. On February 5, 2002, Scott filed a

motion for reconsideration in that case on behalf of ICEC to contest the order of distribution. On February 19, Scott wrote to Frankel and Maseri, urging them to appeal the court's order of discharge and demanding a retainer for legal fees to represent ICEC in an appeal.

On February 20, 2002, Frankel demanded that Scott cease representing ICEC. Five days later, on February 25, 2002, Scott wrote to Frankel and Maseri, claiming that "no impasse of ICEC Nev[ada] management exists in regard to this case because both of you agreed for our firm to obtain recovery of the ICEC Nev[ada] deposits without regard to where they were located. We will keep you advised of developments."

On February 26, 2002, Frankel filed a motion to disqualify Scott on the basis of a conflict of interest. Scott wrote to Frankel on March 7, 2002, through Frankel's attorney, stating, "ICEC Nev[ada] depositors have a superior right to the proceeds taken from ICEC Nev[ada] to pay the fees and costs of the Receiver than does Mr. Frankel either as shareholder or lender to ICEC Nev[ada],□ and affording Frankel the —opportunity to respond to the proposed appeal by ICEC Nev[ada] of the order that discharged the receiver."

On April 22, 2002, Scott filed suit against Frankel and Maseri, on behalf of ICEC investor Investcan, in the United States District Court for the Southern District of Florida, asserting Investcan's right to a return of its funds. Investcan Int'l, Ltd. v. Frankel, No. 02-60565-CIV-MI DD L EBROOKS (S.D. Fla. complaint filed Apr. 22, 2002) .

The court denied Scott's motion for reconsideration in Prudential on May 24, 2002, noting

> a serious question as to ICEC's putative counsel's ability to represent ICEC in this matter. . . . This raises conflict issues. . . . The fact appears to be that at this date, Mr. Scott has represented Mr. Frankel in his individual capacity, in an attempt to get back monies Mr. Scott apparently now seeks on behalf of another client.

Scott appealed the order. The Eleventh Circuit Court of Appeals affirmed. Moresea, Ltd. v. Prudential, No. 02-13523-JJ (11th Cir.).

On July 3, 2002, Scott amended the Investcan complaint to allege that Frankel and Maseri failed to ensure that ICEC operated legally and thus defrauded plaintiffs of their money. The court disqualified Scott on October 4, 2002, on the basis of a conflict of interest in violation of Rule Regulating the Florida Bar 4-1.9. That decision was affirmed by the Eleventh Circuit Court of Appeals on March 28, 2003. Investcan Int'l, Ltd. v. Frankel, No. 02-16312 (11 th Cir. Mar. 28, 2003) .

Based on the factual findings, the referee recommends that Scott be found guilty of violating Rules Regulating the Florida Bar 4-4.1(a) (prohibiting lawyer from making false statement of material fact or law to third party in course of representing client)—one count; 4-1.7(a) (1993) (prohibiting lawyer from representing client if representation will be directly adverse to interests of another client unless lawyer reasonably believes representation will not adversely affect lawyer's responsibilities to and relationship with other client

and each client consents after consultation)—five counts; 4-1.9(a) (1993) (prohibiting lawyer who formerly represented client from representing another person in same or substantially related matter in which that person's interests are materially adverse to interests of former client unless former client consents after consultation)—six counts; 4-1.16(a) (1) (1993) (prohibiting lawyer from representing client or requiring lawyer to withdraw where representation will result in violation of Rules of Professional Conduct or law)—seven counts; and 4-8.4(c) (prohibiting lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation)—one count.

The referee recommends that Scott be suspended for eighteen months and taxed with the Bar's costs. In recommending the eighteen-month suspension, the referee considered two mitigating factors—the absence of a prior disciplinary record and Scott's age (seventy). The referee found no aggravating factors. In recommending an eighteen-month suspension, the referee did not identify the particular Florida Standards for Imposing Lawyer Sanctions on which he relied. Neither did he cite to any previous cases involving similar fact patterns in which this Court imposed eighteen-month suspensions.

Scott petitioned for review of the referee's report. He argues that the Bar's complaint should have been dismissed as barred by the statute of limitations for Bar disciplinary proceedings; Scott was not obligated to tell Frankel about Maseri's criminal history or legal problems with the CFTC; the referee's finding that he misled Frankel was unsupported; the referee's finding that he represented Frankel was unsupported and Frankel had waived any real or

potential conflict of interest; and Scott's duty to protect the public took precedence over his duty to maintain client confidentiality or to decline the representation of a client where a conflict of interest exists or is likely to arise. The Bar filed a cross-petition, seeking review of the sanction recommendation. The Bar argues that a three-year suspension is the appropriate sanction for the proven misconduct.

ANALYSIS

Scott previously raised the statute-of-limitations issue in a motion to dismiss filed in this Court. The Court rejected Scott's statute-of-limitations argument and denied the motion to dismiss. We will not now revisit this issue, which we have previously determined adversely to Scott.

Scott takes issue with the referee's finding that Scott misled Frankel by representing that Maseri was an honest man. Scott argues that he had no duty to advise Frankel of public, nonconfidential information about Maseri. The referee's finding in this regard is supported by competent, substantial evidence. Critically, if a referee's findings of fact are supported by competent, substantial evidence in the record, the Court will not reweigh the evidence and substitute its judgment for that of the referee. Fla. Bar v. Frederick, 756 So. 2d 79, 86 (Fla. 2000) ; see also Fla. Bar v. Jordan, 705 So. 2d 1387, 1390 (Fla. 1998) .

In this instance, the referee found that Scott's action in telling Frankel that Maseri was an "honest man" triggered a duty on his part to also reveal to Frankel the negative information he had concerning Maseri that could have impacted Frankel's decision

to go into business with Maseri. This finding is also supported by the record. Frankel, testifying about his conversation with Scott at the August 4, 1998, meeting, stated: "I asked him what he knew of him, and he indicated to me that Mr. Maseri had never lied to him, that he was an honest man, that he had never lost any money with hi m, and generally he left me feeling very good about him." He further testified that Scott did not tell him anything negative about Maseri during their conversation and that if Scott had told him anything negative, specifically about the public nonconfidential information Scott had about Maseri, Frankel would have gotten up and left.

More importantly, Scott admitted that his intent was to convince Frankel that Maseri was an honest man so as to ensure that Frankel proceeded with the proposed business deal. Concerning his motivation in telling Frankel that Maseri had never lied to him, Scott testified:

> Q Isn't it true that in response to Mr. Frankel's questions, you told him that Maseri had never lied or cheated you because you wanted Frankel to infer that Maseri was an honest man?
>
> A I gave a deposition and acknowledged that. When he started asking his questions, my goal was to preserve the deal. I already knew that in the agreement there was no representation of past litigation or regulation history. I already knew and had discussions with Maseri about what had he disclosed to Frankel and what he had not.
>
> I felt that at a closing that had been going on and negotiations back and forth for seven or

eight days, for those questions to come up, I felt blindsided and as though the guy was trying to make me personally responsible for his problems instead of serving as his own lawyer, which I told him at the outset he had to do, and I told him—I thought I gave him plenty of notice that there was something there for him to worry about when I told him he ought to go get his own lawyer. You know, you can only take a cripple so far.

Q Do I understand you correctly to have just said that yes, you wanted him to infer that Maseri was an honest man because you didn't want the deal to get blown?

A That is true.

Scott also admitted that if the deal had been "blown," he would not have been able to look forward to earning any fees from the ICEC venture.

The referee's finding that Scott represented Frankel is also supported by competent, substantial evidence in the record. The Bar introduced two retainer agreements, dated December 18 and 21, 1998, into evidence. The December 18 agreement states: "After my explanation to you of the existence of potential conflicts of interests among the depositors, you have requested <u>that our firm represent you</u> in the limited capacity to attempt to have the accounts which hold your funds at Prudential released." (Emphasis added.) In the December 21 "Addendum to Retainer Agreement," Frankel "consents, ratifies, and approves the employment of The Scott Law Firm, P.A. (the 'Firm') upon the terms outlined above."

In addition, both Scott and Frankel testified concerning Scott's representation. When discussing the December 18 and 21 retainer agreements, Scott stated: "I also believed that I needed to get [a] retainer from him, which I now prefer to characterize as a waiver." (Emphasis added.) The clear implication of this statement is that Scott himself viewed the documents as retainers at the time he sent them to Frankel.

We reject Scott's argument that it was permissible for him to represent the ICEC investors despite the conflicts presented by his representation under some kind of duty-to-the-public exception. No such exception exists. To the extent that ICEC investors wanted to pursue claims against Scott's past or present clients with interests adverse to theirs, Scott should have referred them to other counsel, someone without a disqualifying conflict.

We next address the referee's guilt recommendations. The Court has repeatedly stated that the referee's factual findings must be sufficient under the applicable rules to support the recommendations as to guilt. See Fla. Bar v. Shoureas, 913 So. 2d 554, 557-58 (Fla. 2005). Scott argues that the referee's guilt recommendations on the conflict-of-interest issue are unsupported by the factual findings. His argument fails.

An attorney engages in unethical conduct when he undertakes a representation when he either knows or should know of a conflict of interest prohibiting the representation. Fla. Bar v. Cosnow, 797 So. 2d 1255, 1257 (Fla. 2001). The referee recommends that Scott be found guilty of violating Rules Regulating the Florida Bar 4-1.7(a), 4-1.9(a),

and 4-1.16(a)(1) for his conflict-of-interest conduct in this case.

Rule 4-1.7(a) provides that an attorney "shall not represent a client if the representation of that client will be directly adverse to the interests of another client" unless: (1) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and (2) each client consents after consultation.

Rule 4-1.9(a) provides that a lawyer who formerly represented a client shall not "represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation."

Rule 4-1.16(a) (1) provides that a lawyer shall not represent a client or shall withdraw where "the representation will result in violation of the Rules of Professional Conduct or law."

Scott represented, either seriatim or in conjunction: Maseri's company, Private Research, in the Maseri case; Maseri in business negotiations with Frankel; ICEC (owned in equal parts by Maseri and Frankel) in the preparation of certain forms and in attempts to have ICEC's assets unfrozen; Frankel, individually, as the maker of a loan to ICEC, for the recovery of the money Frankel loaned to ICEC; and individual ICEC investors, for recovery of the money they invested with ICEC and in a lawsuit for fraud against Maseri and Frankel. All of the representations undertaken by Scott after the creation of ICEC involved claims for ICEC's assets in one way or another. The interests of ICEC, Maseri, Frankel, and the individual ICEC investors were all

directly adverse to one another because all had claims to the same pool of money.

Furthermore, even if the documents Frankel signed on December 18 and 21, 1998, were waivers of conflict rather than retainer agreements, as Scott argues, Frankel's waiver would have been ineffective. Some kinds of conflicts of interest cannot be waived by a client. For example, in Florida Bar v. Feige, 596 So. 2d 433, 434 (Fla. 1992), Feige represented himself and his client in a suit by his client's ex-husband for the return of alimony payments made after Feige's client had remarried. Feige had not represented the client in the divorce proceedings, but was aware of the provision in the couple's marital settlement agreement requiring the ex-husband to pay alimony until the ex-wife, Feige's client, died or remarried.

His client was aware of the conflict in Feige's representing himself and her and agreed to waive the conflict. This Court held that the conflict was the type that could not be waived and suspended him for two years.

The conflicts of interest in this case were as directly adverse as those in Feige and equally unwaivable. Even if the conflicts had been waivable, Frankel's waiver would have been, at best, void or voidable. At the time Frankel signed the retainer agreements, he was unaware of the severity of the conflict. Frankel testified that he believed that his and everyone else's money was intact, just frozen, when he retained Scott. He did not discover that most of the money was gone until much later.

Thus, the referee's findings more than amply support the referee's recommendations of guilt as to

the conflict-of-interest claims, and accordingly, we approve these guilt recommendations.

Scott also argues that the recommendation that he be found guilty of a misrepresentation is unsupported by the factual findings. We reject this argument as well. The referee's findings adequately support his recommendation that Scott be found guilty of violating rules 4-4.1(a) (prohibiting lawyer from making false statement of material fact or law to third person in course of representing a client) and 4-8.4(c) (prohibiting lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The referee found that Scott made a misrepresentation to Frankel when he told Frankel that Maseri had never lied to him, indicating that Maseri was an honest man. The referee also found that Scott failed to tell Frankel about CFTC's suit against Maseri, the court order prohibiting Maseri from entering into certain business transactions, or Maseri's criminal history, even though this information was public and nonconfidential. The combination of the two circumstances constituted a misrepresentation. These factual findings are sufficient to support the referee's recommendations that Scott be found guilty of violating rules 4-4.1(a) and 4-8.4(c) .

We next consider the appropriate sanction for Scott's misconduct. In reviewing a referee's recommended discipline, the Court's scope of review is broader than that afforded to the referee's findings of fact because ultimately it is the Court's responsibility to order the appropriate sanction. See Fla. Bar v. Anderson, 538 So. 2d 852, 854 (Fla. 1989); see also art. V , § 15, Fla. Const. However, generally speaking, the Court will not second-guess

the referee's recommended discipline as long as it has a reasonable basis in existing case law and the Florida Standards for Imposing Lawyer Sanctions. See Fla. Bar v. Temmer, 753 So. 2d 555, 558 (Fla. 1999). The referee in this case did not cite to any cases or standards in support of the sanction recommendations.

The Bar argues in its cross-petition that the referee's recommendation of an eighteen-month suspension is unsupported by the Florida Standards for Imposing Lawyer Sanctions and our caselaw and that the suspension should be for three years. We agree and instead impose a three-year suspension.

In support of its argument that a three-year suspension is the appropriate discipline, the Bar cites to standards 4.32 and 7.2, as well as Florida Bar v. Dunagan, 731 So. 2d 1237 (Fla. 1999) (suspending attorney for ninety-one days for representing husband in dissolution proceeding after he had represented both husband and wife in connection with various business matters and business was marital asset); Florida Bar v. Wilson, 714 So. 2d 381 (Fla. 1998) (suspending attorney for one year for agreeing to represent wife in dissolution proceeding after previously representing couple in unrelated declaratory judgment action and for other misconduct); Florida Bar v. Hmielewski, 702 So. 2d 218 (Fla. 1997) (suspending attorney for three years for making deliberate misrepresentations in medical malpractice action despite significant mitigating factors); Florida Bar v. Calvo, 630 So. 2d 548, 549 (Fla. 1993) (disbarring attorney for his reckless misconduct with regard to securities offering, including failing to disclose to potential investors that one of principals involved had been indicted for

mail fraud); Florida Bar v. Mastrilli, 614 So. 2d 1081 (Fla. 1993) (suspending attorney for six months for filing suit against one client on behalf of another client in matter for which attorney had been retained by both of them); and Feige, 596 So. 2d 433 (suspending attorney for two years for representing himself and client when their interests were adverse, despite client's consent to dual representation).

Standard 4.32 provides that suspension is appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. Standard 7.2 provides that suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. Of course, the standards do not distinguish between suspensions of different lengths. These standards support the referee's recommendation to the same extent that they support the Bar's position.

However, if the egregiousness of the conduct is viewed as falling along a continuum, the closer the conduct falls on the continuum to the dividing line between suspension and disbarment, the longer the suspension that such conduct would warrant. In looking at the corresponding standards for disbarment in these same categories, it appears that Scott's conduct comes close to that dividing line in both cases. Standard 4.31 provides, in pertinent part, that disbarment is appropriate when a lawyer, without the informed consent of the client, simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or

potentially serious injury to a client, or represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.

Standard 7.1 provides that disbarment is appropriate when a lawyer intentionally engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

In the case of both standards, it appears that Scott's conduct falls close to the dividing line on the continuum between disbarment and suspension. This supports the imposition of a suspension close to the dividing line between suspension and disbarment. The maximum length of a definite-term suspension under the Rules Regulating the Florida Bar is three years. R. Regulating Fla. Bar 3-5.1(e) .

Feige is particularly helpful in gauging an appropriate sanction in this case. Feige involved a lawyer who engaged in an unwaivable conflict of interest and who failed to inform a third party of nonconfidential information under circumstances that allowed his client to perpetrate a fraud on her ex-husband, the third party. Scott engaged in precisely the same kinds of misconduct in this case but to a more egregious extent. This Court suspended Feige for two years. Because Scott's misconduct was more egregious, it warrants a longer suspension than that imposed in Feige.

The more recent cases of Florida Bar v. Head, 27 So. 3d 1 (Fla. 2010), and Florida Bar v. Herman, 8 So. 3d 1100 (Fla. 2009), also involved similar but less egregious misconduct. In Head we suspended a lawyer for one year after he created a conflict of interest between himself and his clients by convincing them to pay him $10,000 from the proceeds of a mortgage refinancing when his clients' primary objective in arranging the mortgage refinancing had been to pay off their biggest creditor and paying the lawyer $10,000 frustrated that objective. Head, 27 So. 3d at 9. In addition, the lawyer was not forthcoming in advising the bankruptcy court in his clients' case that he had received $10,000 in fees. He also filed a —Suggestion of Bankruptcy for his firm in his clients' bankruptcy case when he had not filed a petition for bankruptcy for the firm. Id. at 5.

In Herman we suspended a lawyer for eighteen months for going into direct business competition with a client of his firm and representing both companies without advising the first client of the conflict or obtaining a waiver. Herman, 8 So. 3d at 1103. We found his failure to inform his first client about his own company was "dishonest and deceitful" and motivated by "monetary concerns." Id.

CONCLUSION

Accordingly, William Sumner Scott is hereby suspended from the practice of law for three years and ordered to reimburse the Bar for its costs. The suspension will be effective thirty days from the filing of this opinion so that Scott can close out his practice and protect the interests of existing clients. If Scott notifies this Court in writing that he is no

longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Scott shall accept no new business from the date this opinion is filed until he is reinstated by this Court.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from William Sumner Scott in the amount of $5,637.71, for which sum let execution issue.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THIS SUSPENSION.

Original Proceeding — The Florida Bar

John F. Harkness, Jr., Executive Director, and Kenneth Lawrence Marvin, Staff Counsel, The Florida Bar, Tallahassee, Florida, and Arlene Kalish Sankel, Bar Counsel, The Florida Bar, Miami, Florida,

for Complainant

William Sumner Scott, pro se, Miami, Florida,

for Respondent

Appendix B

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
v.
WILLIAM SUMNER SCOTT,
Respondent.
_____/

Supreme Court Case No. SC05-1145

The Florida Bar File No. 2003-70,488(11J)

AMENDED REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to the undersigned being duly appointed as Referee for the Supreme Court of Florida to conduct disciplinary proceedings as provided for by Rule 3-7.6 of the Rules Regulating The Florida Bar, the following proceedings occurred:

On June 24, 2005, The Florida Bar filed its Complaint against Respondent in The Florida Bar File No. 2003-70,488(11J). On January 26, 2006, The Florida Bar filed its Amended Complaint. On June 18, 19, and 20, 2007, final hearing was held. Closing argument was conducted on July 10, 2007. On August 15, 2007, this Referee announced his findings. On January 30, 2009 the Florida Supreme Court granted the Respondent's motion to strike the Referee's report and remanded to the Referee for further proceedings. The Supreme Court's opinion required the Referee to identify the specific facts that

support each rule violation and explain why those facts constitute a violation. The Referee has held numerous status conferences with the parties, ruled on various motions filed by the Respondent, and has at the request of the parties read the entire transcript of the final hearing. (The transcript was not available at the time the first referee's report was filed). All of the pleadings and motions, responses thereto, notices, orders, exhibits, transcripts of the final hearing, and this report, constitute the record in this case and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for the parties:

On behalf of The Florida Bar:	Arlene Kalish Sankel
On behalf of the Respondent:	*Pro se*

II. FINDINGS OF FACT AND RECOMMENDATIONS OF GUILT:

A. Jurisdictional Statement:

The Respondent is and was, at all times material herein, a member of The Florida Bar and subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

B. Narrative Summary of Case and Facts:

This case can essentially be categorized into two separate areas of alleged misconduct. The first area involves dishonesty, albeit by omission, and pertains to a conversation which occurred on August 4, 1998 between Respondent and one Steven Frankel. The second area involves conflict of interest and pertains to Respondent's representation of various parties in civil proceedings in federal court

subsequent to August, 1998. The background which follows is essential to an understanding of this case.

In 1995, Respondent represented a client by the name of Richard Maseri (Maseri). Maseri and his company, Private Research, Inc, became the subject of an injunctive complaint filed by the Commodities Futures Trading Commission (CFTC) in the U.S. District Court for the Southern District of Florida alleging that Maseri and Private Research defrauded customers, converted customer funds, and violated the registration provisions of the Commodity Exchange Act. Respondent represented Private Research in those proceedings.

On October 25, 1995, the U.S. District Court issued preliminary injunctive orders prohibiting Maseri and Private Research from contracting for the sale of any commodity or acting, directly or indirectly, as a commodities trading advisor (CTA) or commodities pooling operator (CPO) without being registered as such or to engage in any fraudulent activities while acting as a CTA or CPO. Subsequently, in 1997, the U.S. District Court entered an order making the preliminary injunction against Maseri and Private Research permanent. On or about August 4, 1998, Maseri created International Currency Exchange Corporation (ICEC) with Steven Frankel (Frankel).[1] Frankel is the complainant in the Bar's case.

During the summer of 1998 and prior to forming ICEC, Maseri placed an advertisement in

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[1] The corporation's name was changed to Intercontinental Currency Exchange (ICEC) on September 21, 1998. Both corporations are referred to as ICEC.

the paper soliciting investors for this commodities brokerage venture. Frankel, who was unaware of Maseri's previous history, responded to the advertisement. During his testimony, Mr. Frankel candidly admits that he... "failed to do any real due diligence on Richard Maseri, and on Mr. Scott, who was representing him." (Tr. pg.73) Maseri and Frankel agreed to create a commodities trading corporation together. Thereafter, in July, 1998, Maseri hired Respondent to represent him in the negotiations with Frankel.[2]

On August 4, 1998, Maseri, Frankel and Respondent held a meeting where Maseri and Frankel signed the ICEC stockholders' agreement. Frankel invested $185,000.00 in ICEC of which $180,000.00 represented a loan to the corporation. Maseri and Frankel each became fifty percent (50%) owners of ICEC. Before Maseri arrived at that meeting, Frankel questioned Respondent about Maseri. Although the Respondent knew of Mr. Maseri's history, Respondent did not inform Frankel of the CFTC suit against Maseri, nor of the court order prohibiting Maseri from entering into certain business transactions, nor of Maseri's criminal history.

The Bar alleges that Respondent's failure to disclose this information to Frankel (none of which

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[2] It has been Respondent's position throughout these proceedings that the legal advice he rendered to Maseri in this regard would have allowed him to engage in ICEC's business in a manner which would not have violated the injunctions previously entered in the CFTC case and I find no misconduct in this regard.

was privileged or confidential) constituted a violation of the Rules Regulating The Florida Bar. I originally found that there was insufficient evidence to support The Bar's position that the respondent's failure to disclose certain information constituted a violation in the original referee's report. However in reviewing and reading the entire transcript (which was unavailable at the conclusion of the final hearing), I found that in addition to the testimony already relied upon, there was additional testimony from the complaining witness, Mr. Frankel which had not been included in the first report and which had not been fully considered by me. The testimony is as follows: Trial transcript page 74, line 1-25 and page 75, line 1-10

Question by Bar counsel: "can you tell us exactly the questions, if you recall, that you asked Mr. Scott about Maseri?

Answer by Mr. Fankel: certainly. I asked Mr. Scott how long he had known Mr. Maseri.

Q. And what did he answer?

A. He said quite a number of years. I don't know if it was seven, eight, nine, or something like that. I asked him how they first met. He indicated that he had has an account with Mr. Maseri when he was in the brokerage business.

I asked him what he knew of him, and he indicated to me that Mr. Maseri had never lied to him, that he was an honest man, that he had never lost any money with him, and generally he left me feeling very good about him.

Q. Did Mr. Scott tell you anything negative at all about Maseri during that meeting?

A. Nothing at all.

Q. Did he tell you that there been any regulatory actions against Maseri?

A. None. If he had I would have gotten up and left.

Q. Did he tell you anything about Maseri's prior criminal history?

A. No. Had he had done so I would have gotten up and left.

Q. Did he disclose to you that Mr. Maseri was the subject of a pending federal court injunction?

A. No. Had he indicated so I would have gotten up and left.

Q. What impression did Mr. Scott's statements leave on you about Maseri?

A. That he was an honorable, honest man in the securities business and that I would have no difficulty working with him.

I find that Mr. Scott's representation to Mr. Frankel that Mr. Maseri was "an honest man" in conjunction with his failure to disclose the public, non confidential information which he knew about Mr. Maseri constitute a violation of rule 4-4.1.(a) Had he not represented to Mr. Frankel that Mr. Maseri was "an honest man" then I believe he would not have been obligated to disclose unfavorable information about Mr. Maseri.

The second issue concerns significant conflicts of interests by Respondent as set forth below.

During the course of the August 4, 1998 meeting, Respondent's representation of Maseri ended and Respondent agreed to represent ICEC. At a minimum, Respondent was to prepare new account form documents for ICEC. (See TFB Ex. 9.)

On November 6, 1998, a Final Order of Judgment was entered against Maseri in the still pending *CFTC* case. On January 15, 1999, the U.S. District Court supplemented the final judgment by adding ICEC as an additional entity subject to receivership. As a result, ICEC's assets went into receivership. The receiver notified Prudential Securities (Prudential), holder of ICEC's assets that the assets were to be turned over to satisfy the judgment. Thereafter, Prudential notified ICEC that all their assets would be frozen until released by the U.S. District Court in the *CFTC* case. On November 26, 1998, Maseri, as president and chief operating officer of ICEC, hired Respondent with regard to the freeze of ICEC's assets.

On December 7, 1998, Prudential filed an interpleader action against CFTC in order for the court to resolve the conflicting claims that it had received from both CFTC and the ICEC investors; *Prudential Securities, Inc. v. CFTC, et al.*, U.S. District Court Case No. 98-CV-8891.[3]

Frankel testified that he was unaware of the foregoing events until at least December 15, 1998.

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[3] Ultimately, Prudential identified Frankel as the sole remaining owner of ICEC and on January 28, 1999, they filed a Second Amended Complaint naming Frankel as a defendant.

He had no role in the day to day operations of ICEC. He did not go to the office. He did not open the bank accounts nor have signatory capacity. On December 15, 1998, ICEC was raided by law enforcement officers. Frankel learned of the raid when he drove to ICEC's office following several unsuccessful efforts to speak with Maseri by telephone. It was then that Maseri informed Frankel that Maseri had problems with the CFTC and he referred Frankel to Respondent.

Frankel immediately made contact with Respondent who advised Frankel that he had been hired to represent ICEC in unfreezing the funds. Frankel testified that Respondent told him that since he was a lender to ICEC, Respondent would ultimately be representing Frankel in getting his funds released to him. Accordingly, on December 18, 1998, Frankel, individually, entered into a retainer agreement with Respondent whereby Respondent agreed "... to attempt to have the accounts which hold your funds at Prudential released." That same retainer agreement reflects that Respondent was retained by ICEC on November 30, 1998 to seek the release of the Prudential freeze of ICEC's funds, but that Respondent's representation of ICEC was terminated on December 12, 1998, following a difference of opinion as to ICEC's future between those in control of the company, those differences continuing to exist through December 18, 1998. The difference of opinion was identified as being about whether the business would continue or would liquidate. (See TFB Ex. 17.) On December 21, 1998, Frankel signed an Addendum to his Retainer Agreement with Respondent whereby "...Frankel, not as a Director, but as a lender to ICEC..." ratified,

adopted and approved his earlier hiring of Respondent. (See TFB Ex. 18.)

On January 6, 1999, Respondent filed a Petition for Emergency Relief on behalf of ICEC in the interpleader action.[4] The petition also contained a cross-claim against Prudential on behalf of ICEC investors. (See TFB Ex. 19.) Prudential wrote Respondent on February 12 and 19, 1999, objecting to his dual representation of ICEC and its investors on the basis of conflict of interest.[5] (See TFB Ex. 20.) Respondent denied any conflict of interest. (See TFB Ex. 21.) On March 17, 1999, the U.S. District Court dismissed the cross-claim.[6]

I find that Respondent's foregoing dual representation of both ICEC and its individual investors, whether with or without actual authority, constitutes a violation of Rule 4-1.7(a) which precludes a lawyer from representing a client if the representation of that client will be directly adverse to the interests of another client. In this regard, I find that the interests of the individual investors in securing the release and return of their frozen funds was directly adverse to the corporate interest of ICEC in regaining their access to and use of the frozen funds. I also find a 4-1.7(a) violation in

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[4] It is unclear by what authority Respondent sought relief on behalf of ICEC as Frankel hired him in his individual capacity via a retainer agreement which reflected Respondent's prior representation of ICEC had been terminated.

[5] They also disputed Respondent's purported representation of the individual ICEC investors.

[6] The court further stated that Respondent could not request relief on behalf of co-defendants he did not represent.

Respondent's representation of Frankel at the same time he purported to represent other investors and ICEC in that all would be competing for the same pool of funds. Thus, their competing interests are directly adverse. Moreover, I find Respondent's foregoing actions constitute a violation of Rule 4-1.16(a)(1) which provides that a lawyer shall not represent a client or, if representation has commenced, will withdraw if the representation will result in violation of the Rules of Professional Conduct. Clearly, given the conflicting interests of the individual investors, Frankel, and the corporate entity, Respondent should not have taken on the multiple representations. Further, even assuming for a moment, in the light most favorable to Respondent, that the conflict was not clear to him, he was put on notice of same once Prudential raised it in their letters to him of February 12 and 19, 1999.

Respondent continued to engage in conflicts of interest during the course of the *Prudential* interpleader action by filing various pleadings on behalf of ICEC investors individually. The following factual findings provide the evidentiary basis for my findings of additional conflict of interest violations by the Respondent.

On February 9, 1999, Respondent filed an answer and counterclaim against Prudential on behalf of ICEC investor Investcan, Ltd. which asserted that Maseri and ICEC operated in violation of Florida law. (See TFB Ex. 24.) On April 13, 1999, the U.S. District Court dismissed Investcan's counterclaim. Despite the dismissal, on or about April 23, 1999, Respondent filed a first amended counterclaim against Prudential which again asserted unlawful conduct by ICEC. (See TFB Ex.

25.) It is my finding that Respondent's representation of Investcan constitutes a clear violation of Rule 4-1.7(a) in that the interests of Investcan were directly adverse to ICEC and Frankel (as a 50% owner of ICEC) as evidenced by Investcan's allegations of unlawful conduct by ICEC. I also find a violation of Rule 4-1.9(a) in that Respondent formerly represented Maseri in the negotiation of the ICEC venture, as well as his company, Private Research, in the underlying CFTC action which resulted in the freezing of the ICEC assets. These prior matters were substantially related to the Prudential interpleader matter and the interests of Investcan were materially adverse to Maseri. Finally, I find that Respondent also violated Rule 4-1.16(a)(1) in that Respondent's representation of Investcan resulted in a violation of the Rules of Professional Conduct, to-wit: 4-1.7(a) and 4-1.9(a).

Respondent continued on the same path. On February 24, 1999, he filed a counterclaim on behalf of ICEC investors Roger Lennon and The Lennon Trust. Upon motion by Prudential, the U.S. District Court dismissed the counterclaim on April 19, 1999. For the same reasons set forth in the preceding paragraph, I find this conduct also constitutes a violation of Rules 4-1.7(a), 4-1.9(a) and 4-1.16(a)(1), Rules Regulating The Florida Bar.

In addition to the Prudential account, ICEC assets were also maintained in accounts at Donaldson, Luftkin & Jenrette (DLJ) which were controlled by Dreyfus Services Corporation (Dreyfus). Like Prudential, Dreyfus also filed an interpleader complaint in order for the court to resolve the conflicting claims it had received from the CFTC and ICEC investors. *Dreyfus Service Corp., v.*

ICEC, et. al, Case No. 99-CV-6151. Respondent, among other things, filed a counterclaim against Dreyfus and a third party complaint against DLJ, on behalf of ICEC investor Moresea, alleging that ICEC did not conduct business in a lawful manner. (See TFB Ex. 27.) I find that Respondent's foregoing actions were in violation of Rule 4-1.7(a) in that the representation of Moresea, given the allegations of unlawful conduct, was directly adverse to ICEC and Frankel; a violation of 4-1.9(a) in that it was materially adverse to Respondent's former client, Maseri, and arose in a substantially related matter; and a violation of 4-1.16(a)(1) in that Respondent commenced the representation despite the fact that same constituted a violation of the Rules Regulating The Florida Bar.[7]

Ultimately, a distribution plan was approved by the *Dreyfus* court and on June 14, 2000, the court dismissed the case. The Prudential interpleader case was dismissed on January 4, 2001 following entry of a court order turning the Prudential funds over to the receiver. Nonetheless, more than one year later, on January 18, 2002, Respondent attempted to re-open Prudential's interpleader case and to file a cross-claim against his former client, Frankel, on behalf of ICEC and all of its investors/depositors for breach of contract, legal malpractice, and fraud. (See

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[7] Respondent has maintained throughout these proceedings that ICEC was organized in a manner contrary to that advised by him in his best legal judgment and that because of this multiple representations were permissible. Without passing on the legitimacy or correctness of Respondent's purported advises in this regard, this Referee nonetheless finds that Respondent's conduct constituted a clear conflict of interest in every instance identified in this Report of Referee.

TFB Ex. 30.) On the same date the motion to reopen was denied, Respondent filed a motion on behalf of investor Investcan seeking joinder to ICEC's cross-claim against Frankel.[8] (See TFB Ex. 31.) Then, on February 13, 2002, Respondent filed a motion to reconsider re-opening the Prudential case on behalf of ICEC and all persons who opened an account with ICEC. (See TFB Ex. 32.)

In response, Frankel demanded that Respondent desist from his representation of ICEC. Within the week, counsel for Frankel wrote Respondent stating "[d]espite prior correspondence to you, you appear determined to pursue claims against Steven [sic] A. Frankel, your former client. We believe your continued involvement in this matter to be improper and in violation of the Rules of Professional Conduct." (See TFB Ex. 33.) In response, Respondent asserted that, "Mr. Steven A. Frankel has never been a client of my firm or me." [9] (See TFB Ex. 34.) Thus, on February 26, 2002, Frankel filed a motion to disqualify Respondent on the basis of conflict of interest. (See TFB Ex. 35.) On May 24, 2002, the U.S. District Court denied Respondent's Motion for Reconsideration in *Prudential*, noting that:

> ...there is a serious question as to ICEC's putative counsel's ability to represent ICEC in this matter....This raises conflict issues . . . . The fact appears to be that *at this date*, [Respondent] *has* represented Mr. Frankel in

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[8] February 4, 2002.

[9] Respondent's assertion is without credibility given the two signed retainer agreements with Frankel dated December 18 and 21, 1998.

> his individual capacity, in an attempt to get back monies [Respondent] apparently now seeks on behalf of another client.
>
> (See TFB Ex. 36.)

The court did not rule on the pending motion to disqualify in that it had determined that ICEC failed to meet its burden in persuading the court to reopen the case.

Dissatisfied with the court's ruling, Respondent appealed the order and the 11th Circuit Court of Appeals upheld the U.S. District Court's decision.

Respondent's above actions constitute another clear conflict of interest. Two years earlier he had entered into a retainer agreement with Steven Frankel whereby he had agreed to represent Frankel's interests individually in the recovery of funds seized by virtue of Maseri's illegal conduct. Nonetheless, Respondent now endeavored to bring an action against his former client Frankel on behalf of other clients with materially adverse interests in the same or substantially related matter in violation of Rule 4-1.9(a). By proceeding with that representation, particularly in light of Frankel's objections to same, Respondent also violated Rule 4-1.16(a)(1).

On January 29, 2002, the U.S. District Court issued an order discharging the receiver in *CFTC v. Maseri* and granting the receiver's final report of distribution. On February 5, 2002, Respondent filed a motion in those same proceedings on behalf of ICEC for reconsideration to contest the order of distribution. Despite being on notice of his conflict of interest, Respondent wrote to Frankel and Maseri on

February 19, 2002, urging them to appeal the court's order of discharge and demanding a retainer for legal fees to represent ICEC in an appeal. (See TFB Ex. 37.) On February 25, 2002, Respondent wrote to Frankel and Maseri claiming that "no impasse of ICEC Nev management exists in regard to this case because both of you agreed for our firm to obtain recovery of the ICEC Nev deposits without regard to where they were located. We will keep you advised of developments." (See TFB Ex. 38.) On March 7, 2002, Respondent wrote to Frankel, through Frankel's attorney, stating "ICEC Nev depositors have a superior right to the proceeds taken from ICEC Nev to pay the fees and costs of the Receiver than does Mr. Frankel either as shareholder or lender to ICEC Nev," and affording Frankel the "opportunity to respond to the proposed appeal by ICEC Nev of the order that discharged the receiver." (See TFB Ex. 39.) Respondent's foregoing actions constitute a clear violation of Rule 4-1.9(a) in that his representation of ICEC in the receivership matter was directly adverse to the interests of his former client Frankel in that he was advocating the interests of other "depositors", a position materially adverse to that of Frankel. Moreover, such conduct necessarily constitutes a violation of Rule 4-1.16(a)(1) which prohibits a lawyer from assuming or continuing a representation if to do so will result in a rule violation.

On April 22, 2002, Respondent filed suit in federal court against his former clients, Frankel and Maseri, asserting Investcan's rights to a return of their funds. *Investcan, et al v. Frankel, et al,* Case No. 02-60565. Respondent amended the complaint on July 3, 2002, to allege that Frankel and Maseri failed to take the appropriate action to be certain

that the business operated legally and thus defrauded plaintiffs of their money. (See TFB Ex. 41.) On October 4, 2002, the U.S. District Court disqualified Respondent on the basis of conflict of interest in violation of Rule 4-1.9 of the Rules Regulating The Florida Bar. (See TFB Ex.42, a copy of which is attached to this Report of Referee as Exhibit "B".) That decision was affirmed by the 11th Circuit Court of Appeals on March 28, 2003. (See TFB Ex. 43.) It is my finding that Investcan's interests in this matter were materially adverse to Respondent's former client Frankel, not to mention Maseri, and therefore constitute a clear violation of both Rules 4-1.9(a) and 4-1.16(a)(1).

III. RECOMMENDATION AS TO GUILT:

Based on the foregoing specific findings and explanations, I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar:

- 4-4.1.(a) **TRUTHFULLNESS IN STATEMENTS TO OTHERS** (in the course of representing a client a lawyer shall not knowingly (a) make a false statement of fact or law to a third person)

- 4-8.4.(c) **MISCONDUCT** (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation)

- 4-1.7(a) **REPRESENTING ADVERSE INTERESTS** (A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client);

- 4-1.9(a) **CONFLICT OF INTEREST; FORMER CLIENT** (A lawyer who has formerly represented a client in a matter shall not thereafter

represent another person in the same or substantially related matter in which that person's interests are materially adverse to the interest of the former client unless the former client consents after consultation); and

- 4-1.16(a)(1) **DECLINING OR TERMINATING REPRESENTATION** (A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of the client if: the representation will result in violation of the Rules of Professional Conduct of law).

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED: I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be discipline by:

A. eighteen months (18) suspension to be effective upon entry of the final order of discipline by the Supreme Court of Florida.

(Taking Mr. Scott's age and lack of a prior disciplinary history into consideration, I am recommending the same discipline as was recommended in the first report even though there is an additional finding of misconduct)

B. Payment of The Florida Bar's costs in these proceedings.

V. PERSONAL HISTORY AND PAST DISCIPLINARY RECORD:

Prior to recommending discipline pursuant to Rule 3-7.6(k)(l), I considered the following:

A. Personal History of Respondent:

Age: 70

Date admitted to The Florida Bar: September 25, 1992

Prior Discipline: None

B. Factors Considered in Aggravation:

None

C. Factors Considered in Mitigation:

9.32(a) - absence of a prior disciplinary record.

I additionally find Respondent's age as a mitigating factor.

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED: I find the following costs were reasonably incurred by The Florida Bar:

Administrative costs Rule 3-7.6(q)	$ 1250.00
Court reporter attendance fee for November 2, 2005 hearing	$ 112.50
Court reporter attendance fee for January 20, 2006 hearing.	$ 70.00
Cost of transcript of hearing held on January 20, 2006	$ 152.00
Court reporter attendance fee for February 21, 2006 hearing	$ 70.00

Court reporter attendance fee and cost of transcript of proceedings for May 10, 2006 hearing. ..... $ 163.50

Court reporter attendance fee for November 16, 2006 hearing. ..... $ 75.00

Cost of transcript of hearing held on November 16, 2006. ..... $ 149.50

Court reporter attendance fee for January 10, 2007 hearing. ..... $ 75.00

Cost of transcript of hearing held on January 10, 2007. ..... $ 230.50

Court reporter attendance fee for February 15, 2007 telephone hearing. ..... $ 75.00

Cost of transcript of telephone hearing held on February 15, 2007 ..... $ 85.50

Court reporter attendance fee and cost of transcript of deposition of Respondent held on February 19, 2007 ..... $ 810.65

Court reporter attendance fee for April 23, 2007 hearing. ..... $ 75.00

Court reporter attendance fee for April 27, 2007 hearing. ..... $ 75.00

Cost of transcript of hearing held on April 27, 2007 ..... $ 60.00

Court reporter attendance fee for June 6, 2007 hearing. ..... $ 100.00

Court reporter attendance fee for final hearing held on June 18, 19, and 20, 2007 ..... $ 1125.00

Court reporter attendance fee for continuation of final hearing held on July 10, 2007	$ 175.00
Court reporter attendance fee and cost of transcript of proceedings for August 15, 2006 hearing	$ 295.00
Cost of transcript of cross examination of Respondent in Frankel v. Scott	$ 115.60
Staff Investigator's costs	$ 52.00
Courier's costs	$ 174.95
Witness' expenses	$ 30.00
Bar counsel's expenses	$ 41.01
TOTAL	**$5,637.71**

It is recommended that such costs be charged to Respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this _____ day of _____, 2009.

_____
NORMAN GERSTEIN, Referee
Circuit Court Judge
Dade County Courthouse
73 West Flagler Street, Room 309
Miami, Florida 33130

Copies to:

William Sumner Scott, Respondent
Kenneth L. Marvin, Staff Counsel
Arlene Kalish Sankel, Bar Counsel

Appendix C

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 02-16312

Non-Argument Calendar

D. C. Docket No. 02-60565-CV-DMM

INVESTCAN INTERNATIONAL, LTD., a corporation formed pursuant to the International Business Companies Act of the Commonwealth of the Bahamas, E. MICHAEL THOMAS, et al.,

Plaintiffs-Appellants,

versus

STEVEN A. FRANK.EL, RICHARD E. MASERI, jointly and severally, et al.,

Defendants-Appellees

Appeal from the United States District Court for the Southern District of Florida

(March 28, 2003)

Before TJOFLAT, BIRCH and COX, Circuit Judges

PER CURIAM:

Investcan International, Ltd; Moresea Limited, and four individuals ("Plaintiffs") appeal following the district court's dismissal of their First Amended Complaint. They contend that the district court erred: (1) in dismissing their complaint; (2) in disqualifying their counsel, William Scott ("Scott");

and (3) in denying their motion for re-consideration as to those orders. They ask that we reinstate Scott as Plaintiffs' counsel, find defendant Steven Frankel's filing of the motion to disqualify to have been in bad faith, and give Plaintiffs 20 days to amend their complaint. We affirm.

For the reasons set forth in the district court's October 4, 2002, we agree that Scott has violated Florida Bar Rule 4-1 .9 and should be disqualified. As it was appropriate to disqualify Scott, it could not be an abuse of discretion to make no finding as to a bad faith claim against Frankel for filing the motion to dismiss. Furthermore, it could not be an abuse of discretion on to deny a motion to reconsider an order properly entered.

It is unclear whether Plaintiffs intend to raise issues about (1) whether the district court's grant of only 20 days to amend following the dismissal was insufficient, and (2) whether the district Court's dismissal with prejudice of Count III of their complaint was in error. If the brief be read to raise such issues, no convincing argument in support of those issues is advanced.

AFFIRMED.

Appendix D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 02-60565-CIV-
MIDDLEBROOKS/JOHNSON

INVESTICAN INTERNATIONAL, LTD., a corporation fanned pursuant to the International Business Companies Act of the Commonwealth of the Bahamas, and E. MICHAEL THOMAS

Plaintiff

vs.

STEVEN A. FRANKEL and RICHARD E. MASERI, jointly and severally d/b/a Intercontinental Currency Exchange Corporation f/k/a International Currency Exchange Corporation,

Defendant.

ORDER

THIS CAUSE comes before the Court upon the Defendant, Steven Frankel's Motion to Disqualify William Sumner Scott, Esq. (DE 12) filed on July 30, 2002. The Court has reviewed the Motion and the responses thereto, and is otherwise fully informed of the premises.

On May 24, 2002, the Court entered an Order in case number 98-8891 denying Frankel's Motion to Disqualify William Sumner Scott, Esq. as moot under the circumstances presented therein. (Case No. 98-8891-Civ-Middlebrooks DE 203). However,

the Court denied the motion without prejudice to it in the event that circumstances warranting disqualification presented themselves in the future. Finding that such circumstances exist in the case herein, Frankel has re-filed the motion in the instant matter.

Case number 98-8891 was originally filed in early December of 1998 by Prudential Securities, Inc. against the Commodity Futures Trading Commission and Barry R. Davidson, as the Receiver appointed in yet another case, Case No. 95-6590. Shortly thereafter, ICEC filed it answer to the complaint. After a period of almost one year, and upon the receipt of a status report in which all parties joined and which recommended that this case be dismissed, the Court on January 4, 2001, entered an Order dismissing and closing the case. On January 18, 2002, more than one year after the case was closed, ICEC, represented by Mr. Scott, moved for leave of the Court add a crossclaim (consisting of three counts: breach of contract, legal malpractice, and fraud) against Steven A. Frankel and Richard Maseri, as well as a counterclaim against Prudential Securities, Inc. The Court denied ICEC's motion to amend because the case had long been closed and ICEC had never moved to reopen it (the "Denial").

ICEC filed a motion, requesting that the Court reconsider the Denial. Proposed cross-claim defendant Frankel a motion to disqualify William Sumner Scott. The Court denied ICEC's motion to reconsider the Denial. The Court's order denying reconsideration also addressed Frankel's Motion to Disqualify Scott. Specifically, the Court stated that:

> "there is a serious question as to ICEC's putative counsel's ability to represent ICEC in

this matter. First, according to all parties involved, there are two co-owners of ICEC, see, *e.g.*, Intercontinental Am. Resp., attached as Ex. 2 to Mot to Reconsider, etc., at ¶ 47 ("Frankel as a 50% owner of ICEC Nev had an equal right to control the operations of ICEC Nev as did Maseri."), only one of whom apparently has consented to the representation of their company in this specific action by this attorney, Mr. William Sumner Scott. *See* Scott Stmt., attached as Ex. M to ICEC Nev's Resp. to Mot. to Disqualify, ¶ 24 ("On December 12, 1998, I terminated my representation of ICEC Nev because Maseri and Frankel each owned 50% of ICEC Nev...").

In response, Mr. Scott alleges that Mr. Maseri consented to Mr. Scott's continued representation of ICEC, as evidenced by a letter attached as Exhibit M to Scott's Statement in response to the Motion to Disqualify.[1] There is no such documentation as to Frankel's consent.[2] Second, and perhaps more significantly, there is evidence

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[1] According to a December 18, 1998 letter from Mr. Scott to Mr Frankel, "[o]n December 12, 1998, ... the involvement of [Mr. Scott's law] firm [in certain negotiations] was terminated because of differences among those in control of [ICEC] as to how to best proceed." The evidence that Mr. Scott was re-retained as Counsel to ICEC after this date is a December 30, 2001, letter from Richard Maseri to Mr. Scott.

[2] Without fully delving into this issue, the Court notes that this may be significant, as the August 8, 1998 Stockholders Agreement, attached to ICEC's Motion to Reconsider, indicates that 60% of the outstanding stock must vote on several issues, including "bringing or defending ... [or] resorting to legal action ...." Stockholders Agreement ¶ 4.1.2.e.

that Mr. Scott has now represented Steven Frankel, one of the two co-owners of ICEC, in Mr. Frankel's individual. capacity. *See* Exs. 1 & 2, attached to Frankel's Mot. to Disqualify.

Mr. Scott now allegedly represents ICEC Nev and seeks to assert claims against, among others, Mr. Frankel. This raises conflict issues, Although Mr. Scott flatly denies that he ever represented Mr. Frankel individually, the above-referenced letters undermine this contention. Although the Addendum to the Retainer Agreement, in connection with the agreement between Mr. Scott and Mr. Frankel, states that "The Scott Law Firm, PA. and William S. Scott have never represented Steven Frankel, individually," this obviously only relates to the time *prior to* December 21, 1998, the date of the addendum and retainer agreement. The fact appears to be that at this date, Mr. Scott has represented Mr. Frankel in his individual capacity, in an attempt to get back the monies Mr. Scott apparently now seeks on behalf of another client.

Ultimately, the Court finds no need to definitively decide this issue, as ICEC has failed to carry its burden in persuading this Court to reopen the case so that ICEC, may amend its response. *However, the Court will deny the motion to disqualify without prejudice to Mr. Frankel's right to reassert this should the need arise.*

Rule 4-1.9 of the Rules Regulating the Florida Bar, which deals with conflicts of interest with a former client, provides:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the Former client unless the form client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as rule 4-1.6 would permit with respect to a client or when the information has become generally known. Rule 4-1.6 sets forth situations where a lawyer may or must reveal information relating to the representation of a client, none of which are applicable to the present case.

The Court has reviewed the submissions by Frankel and Scott, and finds that disqualification is warranted. Accordingly, pursuant to the above rule and the Court's previous Order dated in case number 98-8891, it is

ORDERED and ADJUDGED that the Defendant's Motion to Disqualify William Sumner Scott be and is hereby GRANTED. Plaintiffs shall notify the Court within five days of this Order of their substituted counsel or intent to proceed pro se.[3]

DONE and ORDERED in Chambers at West Palm Beach, Florida this 4 day of October, 2002.

/s/ Donald M. Middlebrooks
DONALD M. MIDDLEBROOKS
UNTTED STATES DISTRICT JUDGE

Copies to all counsel of record.

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[3] The parties are reminded that a corporation may not proceed pro sc.

Appendix E

On July 6, 2010, the Florida Supreme Court entered the following Order:

(RC) Respondent's Motion for Rehearing, Motion for Stay of Effective Date of Suspension, Motion for Exception to Suspension, and Motion for Extension of Time to Wind Up Affairs are hereby denied. The suspension entered on June 10, 2010, shall take effect thirty days from June 10, 2010, and remain in full force and effect until further order of this Court.

Appendix F

IN THE SUPREME COURT OF FLORIDA

SC Case Number 05-1145

THE FLORIDA BAR

Complainant,

vs.

WILLIAM SUMNER SCOTT

Respondent **FBN 947822**

MOTION TO COMPEL DISCOVERY

Pursuant to Rules 1.340(a) and 1.380(a) of the Florida Rules of Civil Procedure, Respondent, William Sumner Scott, ("Scott") moves for an Order to Compel Richard Wagner, Division of Enforcement, Commodity Futures Trading Commission, ("Wagner") and Steven A. Frankel, a member of The Florida Bar who is also the complaining witness in this case, to answer Interrogatories propounded to them and, in support thereof, states as follows:

On September 2, 2005, Scott served his Interrogatories upon Richard Wagner, Division of Enforcement, Commodity Futures Trading Commission, and to Steven A. Frankel pursuant to Rule 1.340(a).

A copy of the interrogatories to Wagner is attached as Exhibit A and the interrogatories to Frankel is attached as Exhibit B.

Wagner and Frankel have failed to file and serve their answers or to appear to object to the interrogatories.[1]

The answers to the interrogatories from Wagner and Frankel are essential to the preparation of Respondent's defense and are believed to lead to admissible evidence in this case.

CONSULTATION WITH OPPOSING COUNSEL

Neither Wagner nor Frankel nor anyone on their behalf has contacted me. The Florida Bar, by its counsel has filed a Motion to Strike the Wagner and Frankel interrogatories.

WHEREFORE, Scott moves for an Order to compel Wagner and Frankel to answer the interrogatories posed to each of them and for such sanctions as the Court deems proper.

Respectfully submitted,

/s/ William Sumner Scott
William Sumner Scott
940 NE 79th Street, Suite A
Miami, FL 33138
305 754-3603
Facsimile 305 754-2668
wmscott@bellsouth.net

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[1] The Florida Bar has filed a motion to strike the interrogatories, but it lacks standing to present any issues on behalf of Wagner or Frankel.

CERTIFICATE OF SERVICE

On this 30th day of October, 2005, the undersigned hereby certifies that the foregoing Motion to Compel was served by First Class Mail, Postage Prepaid, upon The Hon. Norman Gerstein, Circuit Court Judge, Miami-Dade County Court House, 73 West Flagler Street, Room 309, Miami, FL 33130 and to Carlos A. Leon, Esquire, The Florida Bar, Rivergate Plaza, Suite M-100 444 Brickell Avenue, Miami, FL 33131-2404 and to Richard Wagner, Commodity Futures Trading Commission, 3 Lafayette Center, 1155 - 21st Street, N.W., Washington, D.C. 20581 and to Steven A. Frankel, Esquire, 3660 Washington Lane, Cooper City, Florida 33026

/s/ William Sumner Scott
William Sumner Scott

940 NE 79th Street, Suite A
Miami, FL 33138
305 754-3603
Facsimile 305 754-2668
wmscott@bellsouth.net

IN THE SUPREME COURT OF FLORIDA

SC Case Number 05-1145

THE FLORIDA BAR

Complainant,

vs.

WILLIAM SUMNER SCOTT

Respondent **FBN 947822**

SCOTT INTERROGATORIES TO FRANKEL

Pursuant to Rule 1.340(a), Florida Rules of Civil Procedure, Respondent, William Sumner Scott ("Scott") submits to Steven A. Frankel, Esquire, 3660 Washington Lane, Cooper City, Florida 33026, the complaining witness, the following interrogatories to be answered by you on this form as required by Florida Rule of Civil Procedure Rule 1.340(e) and returned to William S. Scott, Esquire, 940 NE 79th Street, Suite A, Miami, FL 33138 on or before the lapse of thirty (30) days from the date of service of these Interrogatories.

I. Definitions

A. "ICEC" collectively refers to ICEC CA and ICEC NV and any other business Frankel owned or operated in Florida to trade currency.

B. "ICEC CA" refers to Intercontinental Currency Exchange Corporation (formerly International Currency Exchange Corporation), a California corporation, Federal Internal Revenue Service Employer identification number 58-2406731,

including any person or entity acting or purporting to act on its behalf.

C. "ICEC Nev" refers to Intercontinental Currency Exchange Corporation (formerly International Currency Exchange Corporation), a Nevada corporation, Federal Internal Revenue Service Employer identification number 58-2409002, including any person or entity acting or purporting to act on its behalf.

D. "You", "Your", "Frankel" or "Witness" refers to Steven A. Frankel, including any other person or entity acting or purporting to act on Frankel's behalf or under his control in the operation as a 50% owner of ICEC CA and ICEC NV.

E. "Maseri" refers to the Richard E. Maseri the other 50% owner of ICEC CA and ICEC NV.

F. "Maseri Receiver" means the Receiver that filed the Motion for Turnover of Funds in the case of Prudential Securities, Incorporated v Commodity Futures Trading Commission, et al at case number 98-8891.

G. "New account forms" mean the documents that were used to solicit ICEC, ICEC CA or ICEC NEV accounts from public customers.

H. "Person" means any person or entity, and includes both the singular and plural.

I. The "Complaint" is the filed by the Florida Bar Association against Scott.

J. "Documents" means the original or exact copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded,

draft, final, original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostatted, duplicated, carbon or otherwise copies or produced in any other manner whatsoever. Without limiting the foregoing, "documents shall include correspondence, letters, telegrams, telexes, mailgrams, memoranda, including interoffice and interoffice memoranda, memoranda for files, memoranda of telephone or other conversations, and including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, booklets, books, drawings, graphs, telephone records, video cassettes, electronic tapes, discs or other recordings, computer programs, printouts, data cards, studies, analysis and other data compilations from which information can be obtained.

K. "Communication" means any oral or written statement, dialogue, colloquy, discussion or conversation, and also means any transfer of thoughts or ideas between persons by means of documents and includes any transfer of data from one location to another.

L. "Scott", "I" and "me" means William Sumner Scott, the Respondent in this case.

M. If not expressly stated, "control" means in your possession, custody, or control or under your direction, and includes in the possession, custody or control of those under the direction of you or your employees, subordinates, legal counsel, accountant, consultant, expert, parent or

affiliated corporation, and any person purporting to act on your behalf.

N. "Related to" shall mean directly or indirectly, refer to, reflect, describe, pertain to, arise out of or in connection with, or in any way connected with the matter discussed.

O. The words "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope hereof any responses to interrogatories, documents, or communications, which might otherwise be construed to be outside the scope hereof.

P. "Ownership interest" shall mean an interest whether owned or possessed, vested or contingent, and whether title is held legally in your name, spouse's name or children' s name, or parent, subsidiary, or other related company and shall include beneficial interest, or interest held through any trust in your family's or business entity's name.

II. Instructions

A. Your answers are to be placed in the space provided on this form. If any space is inadequate to supply the answer, you are to attach a separate piece of paper with the number of the interrogatory identified and complete your answer on that separate piece of paper. You are to attach sufficient paper to permit a complete answer to all questions asked.

B. Identify means to state the date, the parties, title, and if possible the Bates number in Exhibit 1 to fully explain any document and to name, address, telephone and facsimile numbers, and email to fully be able to locate any person.

C. If you Assert that any information is protected against disclosure as a "work product" or by privilege of any kind whatsoever, you shall provide the following information with respect to such information:

1. The name and capacity of the person or persons who prepared the document.
2. The name and capacity of all addressees or recipients of the original or copies thereof.
3. The date, if any, borne by the document.
4. A brief description of its subject matter and physical size.
5. The source of the factual information from which such document was prepared, and
6. The nature of the privilege claimed.

D. When appropriate, the singular form of a word should be interpreted in the plural as may be necessary to bring within the scope hereof the identification of any persons or documents which might otherwise be construed to be outside the scope hereof.

III. Interrogatories

1. Did you read and approve the Complaint before it was filed?

RESPONSE:

2. Were you working for or volunteering for any agency of the Federal or any state or any self regulatory or bar associations (the "entity") at the time you established ICEC as a 50% owner with Richard E. Maseri? If so, identify the entity and

the terms upon which you agreed to provide your services.

RESPONSE:

3. Were you aware that Richard E. Maseri was working for or volunteering or under compulsion by any agency of the Federal or any state or any self regulatory or bar association (the "Entity") to work with you to establish ICEC as a 50% owner with you? If so, identify the Entity and the terms upon which Richard E. Maseri agreed to provide his services.

RESPONSE:

4. What was the source and the terms of the $185,000 deposited on August 6, 1998 to Barnett Bank account number 1678218 in the name of Steven A. Frankel or Sandra Frankel?

RESPONSE:

5. On what date do you claim you first retained William S. Scott as your attorney?

RESPONSE:

6. Describe the work Scott was retained to do for you and when the work was performed.

RESPONSE:

7. What were the financial arrangements regarding your retention or employment of Scott as your attorney.

RESPONSE:

8. On what date did Scott cease to be your attorney. Who terminated the relationship and why?

RESPONSE:

9. Did you pay Scott any legal fees or reimburse him for any costs expended? If so, how much and when. If not, why not?

RESPONSE:

10. Identify all knowledge you had of any prior criminal, civil litigation, and regulatory history of Richard E. Maseri on or before August 4, 1998?

RESPONSE:

11. Did you check any websites or interview any persons concerning Richard E. Maseri's business history or reputation for honesty on or before August 9, 1998? If so, identify who you interviewed and explain what you were told.

RESPONSE:

12. Did you interview any persons concerning Richard E. Maseri's business history or reputation for honesty on or before August 4, 1998? If so, identify who you interviewed and explain what you were told.

RESPONSE:

13. Did you have contact with Scott in any capacity during the period from August 5 through November 25, 1998? If so, describe all such contact, explain when, for what purpose and when contact terminated.

RESPONSE:

14. Did you provide a statement to the Broward County State Attorney on February 22, 1999? If so, were all of your statements truthful? Particularly, are the following statements attributed to be your testimony accurate? If not, explain.

a. "Well, he (sic Maseri) informed me that Mr. Scott had informed him that we should form a California corp. The reason being is that California had litigated with CFTC [sic 9th Circuit case of CFTC v Frankwell, 95-16977, [Commodity Futures Trading Commission ("CFTC") v Frankwell Bullion Limited, 99 F.3d 299 (9th Cir. 1996)] and could run currency exchange in that jurisdiction on an unregulated basis. And that since that litigation had not yet occurred in Florida, we would be better off with a California corporation.

Frankel Statement, February 22, 1999, page 48, lines 10 to 16.

b. "We were going to create a situation - - we were going to be better than everybody else. We were going to create a situation where everybody had their own separate account and no money could flow into the company, except to be paid by the clearing house as a commission."

Frankel Statement, February 22, 1999, page 13, lines 7 to 12.

RESPONSE:

15. How was ICEC required to operate to be certain that it operated within the legal guidelines established by the 9th Circuit case of CFTC v Frankwell, 95-16977, issued October 29, 1996, [Commodity Futures Trading Commission ("CFTC") v Frankwell Bullion Limited, 99 F.3d 299 (9th Cir. 1996)]?

RESPONSE:

16. How were you to operate as a 50% owner of ICEC to be certain that ICEC and you would not be registered under the Commodity Exchange Act, or any securities law as stated in Section 2.2 Purpose and Scope of the ICEC agreements of August 4, and August 8, 1998? Explain.

RESPONSE:

17. Why didn't you file any pleading as a 50% owner to protect the ICEC customers in the case of Prudential Securities, Inc. v CFTC, et al, at case number 98-8891 before the USDC for the Southern District of Florida? Explain fully.

RESPONSE:

18. Explain what due diligence you conducted of the proposed business to be conducted by ICEC before August 4, 1998?

RESPONSE:

19. Explain the ICEC business and how it would operate known to you prior to the meeting on August 4, 1998.

RESPONSE:

20. How does the ICEC business you understood would operate on August 4, 1998 differ from the ICEC business actually operated?

RESPONSE:

21. How often did you go to the ICEC office during the period from the date the office was opened to November 20, 1998?

RESPONSE:

22. Identify the dates and explain what you did when you went to the ICEC office?

RESPONSE:

23. Identify each claim of loss you made related to the $185,000 check you made to payable to ICEC on every Federal and State tax return by date of return, where the tax returns were filed, the amount of loss claimed, the Federal Internal Revenue Service Employer identification number for the ICEC business for which you claimed a loss.

RESPONSE:

As to the submission of the foregoing Interrogatories.

/s/ William Sumner Scott
William Sumner Scott
FBN 947822

As to the Answers to the Scott Third Set of Interrogatories to Frankel: Under penalties of perjury, the foregoing answers are true and correct.

_____

Steven A. Frankel, Esquire

Date:

CERTIFICATE OF SERVICE

On this 2nd day of September, 2005, the undersigned hereby certifies that the original and one copy of the foregoing Scott Interrogatories to Steven A. Frankel, Esquire were served by First Class Mail, Postage Prepaid, upon Steven A. Frankel, Esquire, 3660 Washington Lane Cooper City, Florida 33026 and a

copy was sent by the same method to Carlos Alberto Leon, Esquire, Florida Bar Counsel, 444 Brickell Avenue, Suite M-100, Miami, FL 33131.

/s/ William Sumner Scott
William Sumner Scott
FBN 947822

The Scott Law Firm, P. A.
940 NE 79th Street, Suite A
Miami, FL 33138
305 754-3603
Facsimile 305 754-2668
wscott@wscottlaw.com

IN THE SUPREME COURT OF FLORIDA

SC Case Number 05-1145

THE FLORIDA BAR

Complainant,

vs.

WILLIAM SUMNER SCOTT

Respondent **FBN 947822**

SCOTT INTERROGATORIES TO WAGNER

Pursuant to Rule 1.340(a), Florida Rules of Civil Procedure, Respondent, William Sumner Scott ("Scott"), the undersigned counsel, submits to Richard Wagner, Division of Enforcement, Commodity Futures Trading Commission, 3 Lafayette Center 1155 - 21st Street, N.W, Washington, D.C. 20581, the following interrogatories to be answered on this form as required by Florida Rule of Civil Procedure Rule 1.340(e) and returned to William S. Scott, Esquire, 940 NE 79th Street, Suite A, Miami, FL 33138 on or before the lapse of thirty (30) days from the date of service of these Interrogatories.

I. Definitions

A. "ICEC" collectively refers to ICEC CA and ICEC NV and any other business Frankel owned or operated in Florida to trade currency.

B. "ICEC CA" refers to Intercontinental Currency Exchange Corporation (formerly International Currency Exchange Corporation), a California corporation, Federal Internal Revenue Service Employer identification number 58-2406731,

including any person or entity acting or purporting to act on its behalf.

C. "ICEC Nev" refers to Intercontinental Currency Exchange Corporation (formerly International Currency Exchange Corporation), a Nevada corporation, Federal Internal Revenue Service Employer identification number 58-2409002, including any person or entity acting or purporting to act on its behalf.

D. "You", "Your", "Frankel" or "Witness" refers to Steven A. Frankel, including any other person or entity acting or purporting to act on Frankel's behalf or under his control in the operation as a 50% owner of ICEC CA and ICEC NV.

E. "Maseri" refers to the Richard E. Maseri the other 50% owner of ICEC CA and ICEC NV.

F. "Maseri Receiver" means the Receiver that filed the Motion for Turnover of Funds in the case of Prudential Securities, Incorporated v Commodity Futures Trading Commission, et al at case number 98-8891.

G. "New account forms" mean the documents that were used to solicit ICEC, ICEC CA or ICEC NEV accounts from public customers.

H. "Person" means any person or entity, and includes both the singular and plural.

I. The "Complaint" is the filed by the Florida Bar Association against Scott.

J. "Documents" means the original or exact copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded,

draft, final, original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostatted, duplicated, carbon or otherwise copies or produced in any other manner whatsoever. Without limiting the foregoing, "documents shall include correspondence, letters, telegrams, telexes, mailgrams, memoranda, including interoffice and interoffice memoranda, memoranda for files, memoranda of telephone or other conversations, and including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, booklets, books, drawings, graphs, telephone records, video cassettes, electronic tapes, discs or other recordings, computer programs, printouts, data cards, studies, analysis and other data compilations from which information can be obtained.

K. "Communication" means any oral or written statement, dialogue, colloquy, discussion or conversation, and also means any transfer of thoughts or ideas between persons by means of documents and includes any transfer of data from one location to another.

L. "Scott" means William Sumner Scott, the Respondent in this case.

M. If not expressly stated, "control" means in your possession, custody, or control or under your direction, and includes in the possession, custody or control of those under the direction of you or your employees, subordinates, legal counsel, accountant, consultant, expert, parent or

affiliated corporation, and any person purporting to act on your behalf.

N. "Related to" shall mean directly or indirectly, refer to, reflect, describe, pertain to, arise out of or in connection with, or in any way connected with the matter discussed.

O. The words "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope hereof any responses to interrogatories, documents, or communications, which might otherwise be construed to be outside the scope hereof.

P. "Ownership interest" shall mean an interest whether owned or possessed, vested or contingent, and whether title is held legally in your name, spouse's name or children' s name, or parent, subsidiary, or other related company and shall include beneficial interest, or interest held through any trust in your family's or business entity's name.

II. Instructions

A. Your answers are to be placed in the space provided on this form. If any space is inadequate to supply the answer, you are to attach a separate piece of paper with the number of the interrogatory identified and complete your answer on that separate piece of paper. You are to attach sufficient paper to permit a complete answer to all questions asked.

B. Identify means to state the date, the parties, title, and if possible the Bates number in Exhibit 1 to fully explain any document and to name, address, telephone and facsimile numbers, and email to fully be able to locate any person.

C. If you Assert that any information is protected against disclosure as a "work product" or by privilege of any kind whatsoever, you shall provide the following information with respect to such information:

1. The name and capacity of the person or persons who prepared the document.
2. The name and capacity of all addressees or recipients of the original or copies thereof.
3. The date, if any, borne by the document.
4. A brief description of its subject matter and physical size.
5. The source of the factual information from which such document was prepared, and
6. The nature of the privilege claimed.

D. When appropriate, the singular form of a word should be interpreted in the plural as may be necessary to bring within the scope hereof the identification of any persons or documents which might otherwise be construed to be outside the scope hereof.

III. Interrogatories

1. Did anyone in your office or you participate in the establishment, operation, or wind-up of the operation of ICEC? If so, how did your office participate, identify the date of commencement of your activities, what action was taken, and the resolution of your activities.

RESPONSE:

2. Were you aware that Richard E. Maseri was working for or volunteering or under compulsion

from any agency of the Federal or any state or any self regulatory or bar association (the "Entity") to establish ICEC as a 50% owner? If so, identify the Entity and the terms upon which Richard E. Maseri agreed to provide his services.

RESPONSE:

3. Were you aware that Steven A. Frankel, Esquire, was working for or volunteering or under compulsion by any agency of the Federal or any state or any self regulatory or bar association (the "Entity") to work with you to establish ICEC as a 50% owner with you? If so, identify the Entity and the terms upon which Richard E. Maseri agreed to provide his services.

RESPONSE:

4. What was the source of the $185,000 deposited on August 6, 1998 to Barnett Bank account number 1678218 in the name of Steven A. Frankel or Sandra Frankel?

RESPONSE:

5. Identify all knowledge you had of any prior criminal, civil litigation, and regulatory history of Richard E. Maseri on August 4, 1998?

RESPONSE:

6. Did you interview any persons concerning Richard E. Maseri's business history or reputation for honesty on or before August 4, 1998? If so, identify who you interviewed and explain what you were told.

RESPONSE:

7. Did you or anyone in your office have contact with Frankel in any capacity during the period from

April 1, through November 25, 1998? If so, describe all such contact, explain when, for what purpose and when contact terminated.

RESPONSE:

8. How was ICEC required to operate to be certain that it operated within the legal guidelines established by the 9th Circuit case of CFTC v Frankwell, 95-16977, issued October 29, 1996, [Commodity Futures Trading Commission ("CFTC") v Frankwell Bullion Limited, 99 F.3d 299 (9th Cir. 1996)]?

RESPONSE:

9. How was ICEC to operate to be certain that ICEC would not be registered under the Commodity Exchange Act, or any securities law as stated in Section 2.2 Purpose and Scope of the ICEC agreements of August 4, and August 8, 1998? Explain.

RESPONSE:

10. Explain what due diligence you or anyone in your office conducted of the proposed business to be conducted by ICEC before August 4, 1998?

RESPONSE:

11. Explain the ICEC business and how it would operate known to you or anyone in your office prior to August 4, 1998.

RESPONSE:

12. How does the ICEC business you understood would operate on August 4, 1998 differ from the ICEC business actually operated?

RESPONSE:

13. Identify each claim of loss you or anyone in your office made related to the $185,000 deposit to Steven A. Frankel's account and all reports of that loss.

RESPONSE:

14. What investigation did the Commodity Futures Trading Commission make of the activities of ICEC from August 4, 1998, through the entry of an Order to close the case of Prudential Securities, Inc. v CFTC, et al, at case number 98-8891 before the USDC for the Southern District of Florida? Explain fully.

RESPONSE:

15. What actions did the CFTC take to be certain the innocent ICEC customers received full restitution of their deposits made to ICEC? Explain fully.

RESPONSE:

16. Explain what actions the CFTC took in the case of Prudential Securities, Inc. v CFTC, et al, at case number 98-8891 before the USDC for the Southern District of Florida to be certain the innocent ICEC customers did not pay the Receiver fees assessed for work done in the case of CFTC v Maseri, et al, at case number 95-6970.

RESPONSE:

As to the submission of the foregoing Interrogatories.

/s/ William Sumner Scott
William Sumner Scott
FBN 947822

As to the Answers to the Scott Third Set of Interrogatories to Frankel: Under penalties of perjury, the foregoing answers are true and correct.

_____

Richard Wagner, Esquire

Date:

CERTIFICATE OF SERVICE

On this 2nd day of September, 2005, the undersigned hereby certifies that the original and one copy of the foregoing Scott Interrogatories to Richard Wagner, Esquire were served by First Class Mail, Postage Prepaid, upon Richard Wagner, 3 Lafayette Center, 1155 - 21st Street, N.W. Washington, D.C. 20581, and a copy was sent by the same method to Carlos Alberto Leon, Esquire, Florida Bar Counsel, 444 Brickell Avenue, Suite M-100, Miami, FL 33131.

/s/ William Sumner Scott
William Sumner Scott
FBN 947822

The Scott Law Firm, P. A.
940 NE 79th Street, Suite A
Miami, FL 33138
305 754-3603
Facsimile 305 754-2668
wscott@wscottlaw.com

Appendix G

CLIENT	$AMOUNT FORM OF PAYMENT	PAYABLE TO:
Monarch investment Group	$5,500.00 Wire Transfer	Prudential Securities
Gilley-Farid, Dominique	$10,000.00 Check # 4264	Prudential Securities
Hernandez, Javier	$10,000.00 Check # 330	Prudential Securities
Laurent, Marc	$5,000.00 Check # 188	Prudential Securities
Pena, Tirso	$5,000.00 Money Orders (5)	Prudential Securities
Amerson, Lawrence	$5,000.00 Wire Transfer	Prudential Securities
Cover, Shelton R.	$5,000.00 Wire Transfer	Prudential Securities
Domme, George	$5,000.00 Wire Transfer	Prudential Securities
Griffin, Mack	$5,000.00 Cashiers Check # 4083252	Prudential Securities
Health & Abundance, LLC	$5,000.00 Wire Transfer	Prudential Securities
Jacobsen, Scott M.	$13,000.00 Check # 1497	Prudential Securities
Jacobsen, Scott M.	$12,000.00 Check # 1500	Prudential Securities
Thomas, E Michael Jr.	$7,000.00 Check # 427	I.C.E.C.

Benson, James C.	$5,000.00 Cashiers Check # 8349	Prudential Securities
Bilancia, Leopold	$5,000.00 Check # 109	Prudential Securities
Bilancia, Raymond	$10,000.00 Check # 1055	Prudential Securities
Boutiler, Barry C.	$5,000.00 Cashiers Check # 33600029-143	Prudential Securities
Caporiccio, David	$5,000.00 Cashiers Check # 25371135-142	Prudential Securities
Crosby, Jim	$6,000.00 Cashiers Check # 500 8177492	Prudential Securities
Coyle, R. Terrence	$5,000.00 Check # 1132	Prudential Securities
Garson, Mitchell	$10,000.00 Check # 853	Prudential Securities
Goldman-P, George	$5,000.00 Check	Prudential Securities
Cantrell, Donald W.	$10,00em Check # 7490	Prudential Securities
Hall, Winfield	$5,000.00 Check 700	Prudential Securities
Hodges, Jeffrey A.	$5,000,00 Wire Transfer	Prudential Securities
Intratec, Ltd.	$40,000.00 Wire Transfer	Prudential Securities
Investcan, Ltd.	$50,000.00 Wire Transfer	Prudential Securities

Kastelan, Reginald	$9,500.00 Check # 663 (CAD)	Prudential Securities
Kazemi, Natiya	$5,000.00 Cashiers Check	I.C.E.C.
Lavander, Mirtha & Luis Pantoja	$10,000,00 Check # 109	Prudential Securities
Lavander, Oscar & Mirtha	$10,000.00 Check # 110	Prudential Securities
Lavander, Mirth & Hugo Pantoja	$13,138.89 Check # 111	Prudential Securities
Lavander, Mirtha	$10,000.00 Wire Transfer	Prudential Securities
Lay, Richard V.	$5,000.00 Check # 3722	Prudential Securities
Lewis, Tyler	$4,000.00 Cashiers Check # 25114585-142	Prudential Securities
Miller, James C. & Angela	$5,000.00 Check # 4583	Prudential Securities
Moresea, Ltd.	$100,000.00 Wire Transfer	Prudential Securities
Mucino, Alberto	$5,000.00 Check # 236	I.C.E.C.
Mucino, Alberto	$10,000.00 Wire Transfer (Replacement to Check # 133)	I.C.E.C.
Preston, David K.	$5,000.00 Money Order # 21-814575805	Prudential Securities

Takaoka, Yashinobu	$5,000.00 Wire Transfer (Replacement to Check # 153)	Prudential Securities
Total	$352,638.89	

Appendix H

THE SCOTT LAW FIRM, P. A.
5121 SARAZEN DRIVE
HOLLYWOOD, FL 33021

(954) 964-1546
Facsimile(954) 964-1548

Email: wscott@investmentqualifiers.com

November 30, 1998

Board of Directors
International Currency Exchange Corporation
537 Newport Center Drive, #520
Newport Beach, CA 92660

Attn: Mr. Jorge Velazquez, President and COO

Gentleman,

International Currency Exchange Corporation (the "Company") has advised that Prudential Securities, Inc. has placed account 072 95452 and all affiliated accounts on liquidation only pending completion of an investigation of the ownership, if any, of Richard Maseri. The Company has agreed to retain our firm at $185 per hour for my time and $35 for paralegal's. Our Firm has other legal projects, which includes litigation in progress against Prudential. The Company will pay $500, which is not applied to time and non-refundable, for our agreement to interrupt our schedule to provide immediate attention to the problem.

We are licensed to practice law in the State of Florida and we do not represent that we will practice law in the State of California or any other state where we are not properly licensed. Accordingly, you will retain such other le-gal counsel as are necessary

to complete tasks which involve the state laws of jurisdictions other than Florida.

Please sign and return a copy of this retainer agreement to us by facsimile.

Very truly yours,

/s/ William S. Scott
William Sumner Scott
For the Firm

WSS:lf

The above terms are accepted: /s/ Jorge Velazquez

Jorge Velazquez, President and COO International Currency Exchange Corporation

ADDENDUM TO RETAINER AGREEMENT

The undersigned, Steven Frankel ("Frankel"), not as a Director, but as a lender to International Currency Exchange Corporation, (the "Company") hereby consents, ratifies, and approves the employment of The Scott Law Firm, P. A. (the "Firm") upon the terms outlined above.

This agreement is entered into after full disclosure to Steven Frankel of the prior representation by the Firm of Richard Maseri to review and provide comments to Richard Maseri regarding the form and content of the proposed shareholders agreement between Maseri and Frankel. The Firm further disclosed to Frankel prior to the entry of this agreement that it withdrew from the representation of Richard Maseri prior to the signing of the stockholder agreement and did not represent Mr. Maseri or International in any other capacity except to prepare the forms to be used by Intercontinental and International to establish individual managed accounts.

The Scott Law Firm, P. A. and William S. Scott have never represented Steven Frankel, individually, nor did they participate in the solicitation of any loan or investment made by Steven Frankel in International or Intercontinental or any of its affiliates. Nor did the Law Firm participate in the negotiation of the terms of the stockholders agreement or any other agreement between Steven Frankel and Richard Maseri. To the contrary, the Law Firm put language in one of the drafts of the shareholders agreement that Steven Frankel had the opportunity to seek legal counsel of his choice.

The Law Firm holds a check in the amount of $2,500 from Intercontinental dated November 1, 1998, signed by Richard Maseri in payment for the preparation of the new account forms which has not been paid and which will be replaced by a company check upon release of the Company funds from the freeze at Prudential.

/s/ Steven Frankel
Steven Frankel

Date: 12/21/98

Appendix I

Sun-Sentinel SOUTH FLORIDA

Web-posted:
11:14 p.m. Dec. 15, 1998

(Ursula E. Seemann/Staff)

An investigator enters the offices of Currency Exchange Corp. in Weston on Tuesday. It was part of a crackdown on telemarketing foreign currency operations in Broward County.

Telemarketing operations in Broward shut down

By MITCH LIPKA
Staff Writer

At least 10 Broward County telemarketing operations were raided on Tuesday by a team of state, federal and local law enforcement agencies investigating suspected foreign currency investment fraud.

At least six were ordered closed; several had already been abandoned, authorities said.

A handful of operators set up "boiler rooms" throughout Broward, advertising toll-free numbers on television and newspapers around the country seeking investors interested in making money in foreign currency trading.

Some were offered a chance at profit by investing in Japanese yen futures. Victims in at least one operation lost anywhere from $20,000 to more than $100,000 each -- some receiving statements showing their investment paying dividends.

But the money was not actually there. Investigators, who have been looking into the operations since at least summer, said the money was wired to offshore banks.

Fort Lauderdale police arrested three suspects in the cases and had warrants for two others -- each charged with racketeering, conspiracy and grand theft, said Detective Kevin Allen of the department's Economic Crimes Unit.

Appendix J

THE SCOTT LAW FIRM, P. A.
5121 SARAZEN DRIVE
HOLLYWOOD, FL 33021

(954) 964-1546
Facsimile (954) 964-1548

July 28, 1998

Mr. Richard E. Maseri
770 Ponce de Leon Blvd.
Coral Gables, Florida 33134

Re: Proposed Stockholders Agreement of
International Asset Management Corporation

Dear Richard,

At your request, we have made a quick review of the draft stockholder agreement sent to us by Steven A. Frankel this morning and offer the following comments:

- The price paid and date of purchase of the shares of the Corporation should be added. [handwritten: "$1.00"]
- Under 1..3.1 Permitted Transfers, a right of first refusal to the other stockholder should be added, which once completed, will allow a stockholder to sell their stock to a third party.
- Under 2.2 Purposes and Scope, a specific reference to the fact operations of the corporation will be limited to those permitted within the legal guidelines established by the 9th Circuit case of CFTC v Frankwell, 95-16977, issued October 29, 1996, and that neither party nor the corporation will, be registered under the Commodity

Exchange Act, or any securities law should be added.

- Under 3.1 a specific representation that the $180,000 will be deposited and the budget submitted will be approved at the signing of the agreement.
- Under 4.1.3 the size of the office should be defined and the certificate of incorporation should only refer to the agreement rather than include the terms.
- Under 5.1 the norm is to defer Sub S election until after the corporation is profitable to permit losses to be deducted 100% from the income of the corporation. This question should be referred to a tax accountant for advice.
- You have advised that Exhibit A is no longer applicable in regard to certain business activities but will include your employment agreement in place of 7. Personal Services Agreement. It is customary for the person who serves as President of a start-up to have an employment agreement of three years and a severance bonus in the event it is terminated for any reason.

Once you have reviewed and these comments are accepted, we will conduct a thorough review and draft specific language for inclusion in the agreement together with an employment agreement for your consideration.

Very truly yours,

/s/ William Sumner Scott
William Sumner Scott
For the Firm

WSS:lf

Appendix K

THE SCOTT LAW FIRM, P. A.
5121 SARAZEN DRIVE
HOLLYWOOD, FL 33021

(954) 964-1546
Facsimile (954) 964-1548

Board of Directors
International ~~Asset Management~~ [handwritten: "Currency Exchange /s/ SF"] Corporation
770 Ponce de Leon Blvd., Suite 205
Coral Gables, FL 33134

Gentlemen,

We are pleased to submit the following proposal for "Firm"), to act as special legal counsel to prepare the custom attendant to the commencement of business by International [handwritten: "Currency Exchange /s/ SF"] Corporation, a California corporation, (the "Company"). The stock of the Company will be restricted and the Company managed pursuant to that certain Stockholders Agreement negotiated between Steven A. Frankel and Richard E. Maseri, the sole shareholders of the Company, which was signed prior to the entry of this retainer agreement.

The Company will engage in the brokerage of off-exchange currency contracts and options to retail customers. As special legal counsel, we will work with the Company, the clearing broker or brokers selected by the Company, and the Company accountants to complete the documents and provide the legal opinions necessary for the Company to commence-business.

Neither I, the Firm, nor any of our affiliates, will be involved in, or responsible for, the offer or sale, supervision, or due diligence related to the sale of Company stock or currency contracts or any other evidence of ownership to any investor.

We will prepare the new account forms in camera ready form for submission to the printer the Company selects. Half of our fee will be earned upon the acceptance by the Company of this agreement in exchange for our commitment to complete the tasks assigned to us and the other half of the fee will be earned upon the completion of the camera ready copy. We will assist the Company to obtain and review of bids from printers, offer recommendations, and negotiate the terms of preparation of the number of copies elected by the Company to be printed.

We will deliver the new account forms and supervisory procedures for the Company in draft four', within five (5) days from the date of acceptance of this agreement; and, thereafter, deliver the final copy in camera ready form to the printer in an additional five (5) days after

[handwritten: "/s/ SF"]

receipt of comments from the parties on the distribution list to be developed by the Company. The Company agrees to commit the management time and resources to complete the information requests made by the Firm which are required to complete this project within the projected time schedule.

Our fee for the work to prepare the new account forms and other documentation to permit the Company to engage in business is fixed at [handwritten: "twenty five hundred"] dollars ($

[handwritten: "2500.00 /s/ SF"]) without regard to the number of hours we spend on the project. The payment of tour fee will be deposited with our firm at the signing of this Agreement.

Please note that the above described payment does not include printing and copy costs, filing fees or fees for legal services other than those described in this letter. If any additional services are requested, we will consult with you regarding an appropriate fixed fee or hourly rate for those services.

We will bill filing fees and printing and other costs, based upon estimates we will prepare, which will be payable in advance of the work. All other out-of-pocket costs which we incur in connection with the services to be performed will be billed monthly, payable within ten days of the invoice.

Our agreement is further conditioned on there being no material changes to the proposed business of the Company. If, after we prepare the new account forms there is a material change in the terms of the proposed operation of the Company, by a change in the applicable law or, otherwise, the work required to amend the Company operating agreements and new account forms will be billed on an hourly basis at our normal rates of $185 for principal time and $85 for associates or upon such other terms as we shall mutually agree.

We agree that time is of the essence in regard to the completion of the tasks described in this agreement. Our firm has allocated the time and resources to complete this work within the time provided above subject to prompt completion and acceptance of this agreement. Should completion and

acceptance of this proposal be delayed, the time schedule may also be delayed.

The Company will fully cooperate with the Firm to provide the information and such experts, other than special legal counsel, required complete the tasks assigned in this letter. At our expense and sole responsibility for quality of performance, we may retain such other law firms, due diligence firms, and production facilities as we deem necessary or desirable to complete the tasks assigned to us pursuant to the terms of this agreement.

Our Firm will provide draft forms, legal research and legal opinions only, the Company will be solely responsible for the decisions made in regard to those opinions. The Company and its stockholders have been afforded the opportunity to seek and obtain legal counsel of their choice in regard to the negotiation of this agreement.

All information supplied by the Company to us shall be confidential and shall not be used for any purpose other than as described in this agreement.

[handwritten: "/s/ SF"]

Principals of our Firm are licensed to practice law in Florida and will render opinions only as to the laws of that State and Federal law and only related to the operation of the Company. The Company, under our supervision, will retain such other legal counsel as is necessary to obtain opinions as to the laws of any other jurisdiction that may be required or desirable and for matters not included within the scope of this agreement. The other experts selected, the prospective customers, and all other parties will be required to obtain legal and tax counsel of their choice.

This letter includes and supersedes all prior verbal and written agreements between our Firm and the Company.

If the above terms are acceptable, please acknowledge the agreement of the Company in the space provided on the copy of this letter and return it to me.

We look forward to working to complete this important phase of the development of the Company.

Very truly yours,

/s/ William Sumner Scott
William Sumner Scott
For the Firm

On behalf the Company, the undersigned, duly authorized, accepts the foregoing terms of legal representation by the Firm and hereby acknowledges receipt of a copy of this agreement.

International ~~Asset Management~~ [handwritten: "Currency Exchange"] Corporation

By: /s/ Richard E. Maseri
Richard E. Maseri
Board Member and President

Accepted on: August 4, 1997

Approved:

/s/ Steven A. Frankel
Steven A. Frankel
Board Member

Appendix L

THE SCOTT LAW FIRM, P. A.
5121 SARAZEN DRIVE
HOLLYWOOD, FL 33021

(954) 964-1546
Facsimile (954) 964-1548

August 5, 1998

Mr. Richard E. Maseri,
21345 St Andrews Blvd., #300,
Boca Raton, Fl 33433

Dear Richard,

This letter is to confirm our conversation this morning.

The movement of the location of the formation of International Currency Exchange Corporation (the "Corporation") from Florida to California, together with the fact we represented your interests during the negotiation of the Stock Agreement related to the formation, has caused us to decline to represent the Corporation because we are not licensed to practice law in California and our prior representation of you could potentially present a conflict of interest with those of the Corporation. We are grateful for the consideration the Board of Directors gave to our possible representation of the Corporation and offer our best wishes for its' future success.

Enclosed is our fee statement for our representation of your interests in regard to the negotiation of the Stock Agreement which we would appreciate your placing in line for payment.

Very truly yours,

/s/ William Sumner Scott
William Sumner Scott
For the Firm

WSS:lf

Appendix M

THE SCOTT LAW FIRM, P. A.
940 NORTHEAST 79TH STREET, SUITE A
MIAMI, FL 33138

(305) 754-3603
Facsimile (305) 754-2668

wscott@wscottlaw.com

March 21, 2005

Maureen Donlan, Esquire,
Assistant U. S. Attorney,
Counsel for the CFTC,
99 N. E. 4th Street, Third Floor,
Miami, Florida 33132-2111

Re: CASE NO. 98-8891 – Prudential v CFTC, et al

Dear Ms. Donlan,

Your office represented the CFTC in the above case.

The investigation of the Broward County Sheriff's office (the "BSO") has led to the discovery of evidence that is relevant to the Prudential case. The purpose of this letter is to request the CFTC to join in a Motion to Re-open the case.

Briefly stated, Prudential and Steven Frankel participated in a sting to detect and prosecute fraudulent sales of Forex (foreign currency) accounts in Florida. Prior to the operation, Richard E. Maseri, one of the 50% owners of ICEC, advised Steven Frankel, the other 50% owner, that compliance with the Frankwell decision, CFTC v Frankwell, 95-16977, [*Commodity Futures Trading Commission*

("CFTC") v Frankwell Bullion Limited, 99 F.3d 299 (9th Cir. 1996)] required that ICEC solicit all customer accounts from an office within the 9th Circuit and the customer accounts had to be held in the name of the customer and segregated from all other accounts. Steven Frankel escaped criminal prosecution and all civil liability for the operation of ICEC by denial of any involvement in ICEC's operation. However, his statement to the Broward County Assistant State Attorney, Don Tenbrook, on February 22, 1999, prove he had knowledge of what he was obligated to do before operation of ICEC commenced. Following is an excerpt from his statement of information communicated to him prior to his entry into the ICEC agreements:

a. "Well, he (sic Maseri) informed me that Mr. Scott had informed him that we should form a California corp. The reason being is that California had litigated with CFTC [sic 9th Circuit case of CFTC v Frankwell, 95-16977, [*Commodity Futures Trading Commission ("CFTC") v Frankwell Bullion Limited,* 99 F.3d 299 (9th Cir. 1996)] and could run currency exchange in that jurisdiction on an unregulated basis. And that since that litigation had not yet occurred in Florida, we would be better off with a California corporation.

   Frankel Statement, February 22, 1999, page 48, lines 10 to 16.

b. "We were going to create a situation - - we were going to be better that everybody else. We were going to create a situation where everybody had their own separate account and no money could flow into the company, except to be paid by the clearing house as a commission."

Frankel Statement, February 22, 1999, page 13, lines 7 to 12.

4. On August 4, when I withdrew as Mr. Maseri's attorney in the presence of Mr. Frankel, they had both signed an agreement to fully comply with guidelines provided in *CFTC v Frankwell*, 95-16977, [*Commodity Futures Trading Commission ("CFTC") v Frankwell Bullion Limited*, 99 F 3d 299 (9th Cir. 1996)]. Had they complied with those Guidelines, the ICEC operation would have been perfectly legal. Accordingly, the Maseri plea bargain must concern matters not related to my representation of him.

5. But after my withdrawal and without my knowledge, Frankel and Maseri, as 50% owners, sold forex currency accounts from a location in Weston, Florida and deposited the proceeds of those accounts in a single account in the name of ICEC at Prudential Securities, Inc.

6. Maseri retained me on behalf of ICEC on November 27, 1998, to attempt to lift a freeze Upon the ICEC accounts at Prudential.

7. During my investigation, I determined that Prudential, ICEC, Frankel and Maseri had Violated the Securities Act of 1933 ("33 Act") and the Commodity Exchange Act, 7 U.S.C. §1, et seq. (CEAct") by the sale of interests without a prospectus and the operation of unregistered public commodity pool. As a result of this violation, all of them owe full restitution to the ICEC customers.

8. Mr. Maseri filed his Bar Complaint against Mr. Frankel on his own, without my suggestion or representation. Other than to refute statements

made by Mr. Frankel that are known to me to be false, I have no interest in Mr. Maseri's Florida Bar Claim against Mr. Frankel.

9. Prudential filed a Federal interpleader to determine the rights of the ICEC customers to Receive full restitution of their money to the USDC for the Southern District of Florida at case number 98-8891. That case was closed by agreement of the parties without resolution on the merits.. Prudential and the CFTC entered into an agreement without explanation to the Court the involvement of Frankel in the formation of ICEC or that ICEC had operated in violation of the 33Act and the CEAct and that as a result Frankel and Maseri, as 50% owners, owed full restitution to the ICEC customers.

Because Mr. Frankel is an attorney, he would participate as a 50% owner in the formation, sale of interests, operation of ICEC from an office in Florida after knowledge of my advice to Mr. Maseri only under the protection of immunity from prosecution and civil responsibility.

The right questions to ask are: (i) who granted immunity to Mr. Frankel before the operation of ICEC was commenced; (ii) why wasn't the CFTC Division of Enforcement involved in the raid of ICEC and the other Florida forex operations on December 15, 1998; and, (iii) who advanced the $185,000 equity start-up money to fund ICEC. The answers to those questions will provide the facts that were withheld from the Court and that withholding will justify the opening of USDC for the Southern District of Florida case number 98-8891 styled as Prudential v CFTC,

et al, with the result that all ICEC customers will receive full restitution.

As a clue to who has the answers, begin with the fact that the CFTC was a party to both the AIM and Prudential cases and that Maseri was named as a defendant in both cases.

Very truly yours,

/s/ William S. Scott
William S. Scott
For the Firm

WSS:lf

cc: Charlie Crist, Esquire – Florida State Attorney

Michael J. Satz, Esquire – Broward County State Attorney

John F. Harkness, Esquire – Executive Director – The Florida Bar

Alan Anthony Pascal, Esquire – Bar Counsel – The Florida Bar

Bernard Bober, Esquire – Public Defender for Richard E. Maseri

Richard E. Maseri – 50% owner of ICEC

Steven A. Frankel, Esquire – 50% owner of ICEC

Maureen Donlan, Esquire, Assistant U. S. Attorney

Sharon Brown-Hruska, Acting Chairman, CFTC

The Hon. Thomas D. Hall, Clerk of the Supreme Court of Florida

Alberto Gonzales, Esquire, US Attorney General

William H. Donaldson, Chairman, SEC

Guy M. Tunnell, Commissioner Florida Department of Law Enforcement

Appendix N

CLOSED CIVIL CASE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-8891-CIV-MIDDLEBROOKS

PRUDENTIAL SECURITIES INCORPORATED,

Plaintiff,

vs.

COMMODITY FUTURES TRADING COMMISSION; RICHARD E. MASERI; INTERCONTINENTAL CURRENCY EXCANGE, INC., a Nevada corporation; INTERNATIONAL CURRENCY EXCHANGE CORP., INC., a California corporation, et. al.,

Defendants.

ORDER OF DISMISSAL AND CLOSING CASE

THIS CAUSE comes before the Court upon the parties' Status Report, filed January 2, 2001. Based on the agreement of the parties and the Receiver appointed in this case, it is hereby ORDERED AND ADJUDGED that this case is DISMISSED. It is further ORDERED that this case is CLOSED and all pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at Miami, FLORIDA THIS 4 day of January 2001.

/s/ Donald M. Middlebrooks
DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Appendix O

FACSIMILE TRANSMITTAL

DATE: July 29, 1998

NUMBER OF PAGES, INCLUDING TRANSMITTAL SHEET ___29

RECIPIENTS FACSIMILE NO: 954-964-1548

TO: William Scott, Esq.

FROM: Steven A. Frankel

Dear Will:

I received your last fax and reviewed the addendum and original agreement carefully. As I wrote to Richard, the agreement sent to him and you was a first rough draft. After reviewing it, it was missing some important provisions. I have therefore made some changes. Following you will find two copies of the agreement. The first copy shows additions underlined and ~~deletions~~ struckthrough for your convenience. I have additionally added the amendments you requested to which I have agreed. The following are my comments with regard to those with which I did not agree:

1. Unless you can provide me with very good reasons to incorporate in California, I would like to stay with a Florida corporation; and
2. I don't agree to deleting the personal services agreement and have kept it in; and
3. The brokerage commission change may be a deal killer for me. Understand, I am funding this operation. Richard is putting his expertise and work in for his equity. We already discussed no compensation and now I am hit with this. Richard

is supposed to trade currencies, not answer the phone and make sales. If he is talking about turning over any business that he is now trading. I have no problem with that. As for the override, brokerage management is already part of his responsibility for this operation.

4. We don't need the language as to legal counsel, as Richard is being represented and as I am a practicing member of the Florida and New York Bar.

Lastly, I made a change in the equity portion of the agreement, to 50/50. Richard originally discussed 1/3 for me 2/3 for him and explained that the commodity operation was the reason. Then he agreed to go 45/55. The option was for the commodity deal. As this is no longer in the works, this should be a straight 50/50 deal.

I have also included Exhibit "B", the last page. These are cash flow projections, which I modified by almost fifty percent (lower that is) from the cash flow projection Richard provided.

You can reach me at any time on my cellular 954-647-7280; 954-442-8966 (messages only) or at home at 954-436-1422.

Appendix P

THE SCOTT LAW FIRM, P. A.
5121 SARAZEN DRIVE
HOLLYWOOD, FL 33021

(954) 964-1546
Facsimile (954) 964-1548

Email: wscott@investmentqualifiers.com

December 18, 1998

Mr. Steven A. Frankel
3660 Washington Lane
Cooper City, Florida 33028
Dear Mr. Frankel,

On November 30, 1998, International Currency Exchange Corporation (the "Company") retained our firm to seek to release a hold which Prudential Securities, Inc. placed on account 072 95452 and all affiliated accounts pending completion of an investigation of the ownership, if any. of Richard Maseri in those accounts.

Subsequently, Prudential forwarded a copy of Civil Action 98-8891 it filed in the United States District Court for the Southern District of Florida which named the Company as a party. Among the exhibits is a copy of a letter where Mr. Maseri represents that he is the owner of the Company accounts. Prudential has elected to defer placement of the Complaint for service to allow the parties time to attempt to amicably resolve the issues.

On December 12, 1998, negotiations were in process between Prudential, the Commodity Futures Trading Commission, the Receiver appointed to collect Mr. Maseri's assets, and the Company.

However, the involvement of our firm was terminated because of differences among those in control of the Company as to how to best proceed. Those differences exist today. The question is will the Company attempt to resolve this impasse and continue in business or will it liquidate.

The letter is written in response to your request for information to confirm the notice of the Prudential freeze upon the accounts and the pending litigation provided to you by Mr. Richard Maseri and to afford you the opportunity to seek legal counsel of your choice.

After my explanation to you of the existence of potential conflicts of interests among the depositors, you have requested that our firm represent you in the limited capacity to attempt to have the accounts which hold your funds at Prudential released. I will keep you fully advised of developments. You have not disclosed any confidential information to me and will not do so without my prior written approval.

Our firm will look to the Company for the payment of its legal fees. Only those costs which are directly related to keeping you informed of developments such as long distance, machine copies, courier and postage will be billed to you.

This limited engagement letter is further limited by the fact that we are licensed to practice law in the State of Florida and we do not represent that we will practice law in any other jurisdiction where we are not properly licensed or that we will represent you other than as provided in this agreement.

Please sign and return a copy of this retainer agreement to us by facsimile.

Very truly yours,

/s/ William Sumner Scott
William Sumner Scott
For the Firm

WSS:lf

The above terms are accepted:

/s/ Steven A. Frankel
Steven A. Frankel

Appendix Q

[page] 204

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: SC05-1145

FLORIDA BAR,

Complainant,

vs.

WILLIAM SUMNER SCOTT,

Respondent.

_____/

Proceedings had and taken place before The Honorable Norman S. Gerstein, at the Dade County Courthouse, 73 West Flagler Street, Miami, Florida, on 19th day of June 2007, commencing at the hour of 10:30 o'clock a.m., and being a Trial.

VOLUME II of III

OFFICIAL REPORTING SERVICES, LLC
(954)467-8204

...

[page] 249

Q. Do you know if anybody else made an arrangement with Mr. Maseri to arrive late to that meeting?

A. No, I don't. I'm well aware of what he said when he got there, which was that he was apologizing--

MR. SCOTT: That is not a question I asked, Your Honor.

THE WITNESS: It's part of the answer to the question.

THE COURT: Go ahead. You can answer.

THE WITNESS: I'm well aware of what he said when he got there, which was that he apologized for being late. He had a problem with traffic.

BY MR. SCOTT:

Q. I wish to show you what's been marked Respondent's Exhibit I. For a complete reference to the transcript, it came from -- it's the one that was given to you this morning that you have a full copy there.

Referring to Page 13 -- strike that.

Referring to Page 18, read into the record the highlighted material, please.

A. "One of the things I did do at that meeting was confront Mr. Scott directly and ask him how long he knew Mr. Maseri and what his relationship was with Mr. Maseri. Can you answer those as you go along -- he told me that he knew Mr. Maseri for about ten years. I asked him do you know if that in fact was true. I don't know if that's true. That's what he told

me. What else did he tell you? I asked him what he knew about Mr. Maseri, and if he knew anything detrimental about Mr. Maseri. His response to me was that Mr. Maseri, that he had tricked, he being Mr. Scott, had traded currency with Mr. Maseri and that Mr. Maseri had never lied to him." And that is the total response.

MS. SANKEL: Can I have a copy of the correct exhibit, please, Mr. Scott?

MR. SCOTT: I don't have a copy. I don't know how that happened.

THE COURT: Do you need copies?

MS. SANKEL: I don't know. He gave me something other than that which he handed the witness, Your Honor.

MR. SCOTT: I'm sorry, Your Honor. I must have missed it. It was not identified yesterday. If we could have two of each?

THE COURT: Sure.

BY MR. SCOTT:

Q. Do you have any knowledge that I knew Maseri differently than for ten years and that he never lied to me?

Appendix R

[page] 336

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: SC05-1145

FLORIDA BAR,

Complainant,

vs.

WILLIAM SUMNER SCOTT,

Respondent.

_____/

Proceedings had and taken place before The Honorable Norman S. Gerstein, at the Dade County Courthouse, 73 West Flagler Street, Miami, Florida, on 20th day of June 2007, commencing at the hour of 11:40 a.m., and being a Trial.

VOLUME III of

OFFICIAL REPORTING SERVICES, LLC
(954)467-8204

...

analysis that I referred to earlier on or about October 1st or 2nd.

On November the 25th of 1998, I got a phone call from Maseri telling me that all of the ICEC accounts at Prudential had been frozen, and asking me would I please jump in and attempt to get them released. I agreed to do that, made a couple of phone calls, started doing my investigation. On or about December the 6th, I determined that in my opinion this entire transaction was an intentional fraud from the get go.

I based that opinion on several things. First, before the deal was done I had given an opinion of what had to be done to comply with a case called CFTC versus Frankwell. That case was decided in the 9th Circuit Court of Appeals, and it excluded Forex from being registered under the Commodity Exchange Act.

It's my opinion that the business and all sales and all customer contact to comply with that decision and be under its' umbrella, required that the office be in the 9th Circuit and that all contact with customers be from there, and that each account had to be segregated in the name of the customer, that each customer then had to approve every trade. You could

not take a power of attorney from the customer either. And Maseri knew that. He then, I know, communicated that to Frankel because also in this same memo he says, "Unless you can provide me with a very good reason to incorporate in California, I would like to stay with a Florida corporation, as Item Number One."

Now, I explained that it had to do more than just be incorporated. That's just fluff. You have to actually operate out of there. Both of them represented to me that their sales office was going to be in Newport Beach, California. They both told me that they understood fully what I told them they had to do, and they both proceeded with the business deal, which in my opinion at the time, was perfectly legal because it fell under the Frankwell Exception that they could operate it unregistered and that they could solicit customers and open segregated individual accounts.

When I got the project in November 25th, and by the time I collected the information on December the 6th, I find, one, they didn't operate with segregated accounts. And both Frankel and Maseri knew better. They put all of the money in a single account, which is also an exhibit that's been introduced in this case,

listing all the names of the people that the money into Prudential. That was all put in a single account under Maseri's sole name. It's absurd.

First, in order to put it in a single account you have to be a commodity pool operator because you're automatically a commodity pool operator if you have more than 14 clients and more than $250,000.00 in 1998. The list has far more than $250,000.00, and there is far more than 15 persons, which allows me to jump ahead for a moment.

I filed a complaint against Prudential for accepting a commodity pool account and putting that money all in one place which is also a violation for them to do that, that a 12 year old year would understand could stand a Motion to Dismiss, and the Federal Court in its' infinite wisdom dismissed it on a Motion to Dismiss, and that everything that happened as this case progresses convinced me that this was a Federal sting that had gone bad and instead of coming forward and paying those people their money and giving it back to them the way they should have, they were going to stiff them.

In addition, they were trying to get me--

THE COURT: Who is they?

MR. SCOTT: I don't know exactly. I wish I

APPENDIX S

COLL DAVIDSON CARTER SMITH SALTER &
BARKETT PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

3200 MIAMI CENTER
201 SOUTH BISCAYNE BOULEVARD
MIAMI, FLORIDA 33131-2312
(305) 373-5200
TELECOPIER(305) 373-7296

January 15, 1599

VIA FACSIMILE
AND U.S. MAIL

William 3umr4-- Scott, Esq.
The Scott Law Firm, P.A.
5121 Sarazan Drive
Hollywood, FL. A 33021

Re: International and Intercontinental Currency Exchange Corporations; Richard E. Maseri

Dear Mr. Scott:

In response to your January 13, 1999, letter to Barry R. Davidson, contrary to your assertions, neither the Receiver nor counsel for the Receiver received documentation, from Intercontinental or otherwise, regarding the ownership of Intercontinental stock. The Receiver did receive a letter dated December 23, 1998, from Dennis J. Eisinger, counsel for Steven A. Frankel, regarding an alleged loan made by Mr. Frankel in the amount of $180,000.00 to International Currency Exchange Corporation. At no time prior to the hearing on January 13, 1999, did the Receiver or counsel for the Receiver receive the Stockholders Agreement which

was attached to International and Intercontinental's opposition to the Receiver's emergency motion, or any other documentation regarding the ownership of Intercontinental and/or International, despite repeated written requests to you.

The Receiver intends to make further investigation regarding Mr. Maseri and Mr. Frankel's respective ownership interests in Intercontinental and/or International. There are, inconsistencies which need to be resolved regarding the ownership of said companies, including without limitation, the November 30, 1998, letter on International letterhead from Jorge Velazquez, purported President/COO of International Currency Corporation, to Prudential Securities, Inc., advising Prudential that "R.E. Maseri is not a stockholder, has never been a stockholder, or has had any form of ownership in the above-referenced corporation." This letter was attached to your December 7, 1998, letter to Gary M. Murphree, Esq., at this office. This information previously provided by you is in directed contradiction to the allegations now made by you that Mr. Maseri is a 50% stockholder in Intercontinental and/or International, and by Mr. Maseri that he owned those companies.

Unfortunately, we seem to have difference of opinion as to the Court's ruling at the hearing on January 13, 1999. Pursuant to said ruling, the Receiver will not authorize the release of assets held at Prudential, nor will it release the money received from NationsBank, without further Court order. Now, pursuant to the Court's ruling, the Receiver will retain possession of the computers which were located at the Intercontinental premises until further Court order.

As directed by the Court, please provide to the Receiver, as soon as possible, all Intercontinental and/or International investor account records, including without limitation, customer account agreements, monthly statements, and wire transfer instructions. We also renew our request for the fifth time that you also immediately provide copies of corporate records and tax returns evidencing ownership of shares of Intercontinental and/or International.

As you stated to me that they would, unknown Intercontinental employees, after breaking into the Intercontinental premises, removed all paper records from the Intercontinental premises without authorization of the Receiver. Accordingly, we must rely on you to provide those records.

As stated in open court, the Receiver, with the cooperation of Intercontinental and/or International and Prudential, will investigate the nature and origin of the assets held in the accounts at Prudential, and to the extent the Receiver is able to trace assets to bona fide, innocent investors, the Receiver will return funds to those investors to the extent those funds remained in the Prudential account at the time the account was frozen.

Very truly yours,

/s/ Vail Gardner
N. Vail Gardner

NVG/mdk

cc: Barry R. Davidson, Esq.